

Jennifer Weidman

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN OROSS, III,	:	
PLAINTIFF	:	CIVIL ACTION
	:	
VS	:	NO. 21-5032
	:	
KUTZTOWN UNIVERSITY, et al.,	:	
DEFENDANTS	:	

ZOOM DEPOSITION OF JENNIFER WEIDMAN

DATE AND TIME: Monday, March 7, 2022
at 10:02 a.m.

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 22
 23
 24
 25

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WITNESS	EXAMINED BY	PAGE
Jennifer Weidman	Ms. McKinley	4
	Ms. Le	146
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7	SO Exhibit 9 - Guide for Spring 2022	22
8	COVID-19 Information, 12/8/21; Guide for	
9	Fall Semester COVID-19 Information, 8/8/21;	
10	Guide for Fall Semester COVID-19	
11	Information, 8/8/21	
12	SO Exhibit 10 - Guide for Spring 2022	23
13	COVID-19 Information, 3/2/22	
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15	COVID-19 Information, 8/8/21	
16	SO Exhibit 12 - Various correspondence	31
17	SO Exhibit 13 - Kutztown University Policy	40
18	DIV-002 and DIV-008	
19	SO Exhibit 14 - Letter dated 8/24/21 and	69
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1 STIPULATION
 2 It is hereby stipulated by and between
 3 counsel for the respective parties that reading,
 4 signing, sealing, certification and filing are waived;
 5 and that all objections except as to the form of the
 6 question are reserved to the time of trial.
 7
 8 JENNIFER WEIDMAN, called as a witness, duly
 9 being sworn, testified as follows:
 10
 11 EXAMINATION
 12
 13 BY MS. McKINLEY:
 14 Q Good morning, Ms. Weidman. My name is
 15 Lorrie McKinley, as I'm sure you know, and I'm
 16 obviously going to be asking you questions today. You
 17 have had your deposition taken before, haven't you?
 18 A I have not.
 19 Q Oh, you haven't. Okay. All right.
 20 Well, then I will give you a little fuller explanation
 21 than I was planning about what we're going to do
 22 today.
 23 I'm going to be asking you questions
 24 pertaining to the case that Dr. Oross has brought
 25 against Kutztown University. When I ask you a

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1 question, if you don't understand it or if you can't
 2 hear me or, you know, what have you, just let me know
 3 and I'll be happy to rephrase it or repeat it.
 4 If you do answer a question and you don't
 5 tell me you don't understand it or couldn't hear me,
 6 I'm going to assume that you did hear me and did
 7 understand it. Does that sound fair to you?
 8 A That's fine.
 9 Q Okay, good. One of the most important
 10 things to remember about a deposition, and especially
 11 in a Zoom deposition like this, is we have a court
 12 reporter who is going to take down everything that I
 13 say and everything that you say and so it's very
 14 important that we not speak over each other.
 15 So if you can wait until I finish my
 16 question and I'll try to wait until you finish your
 17 answer. Sometimes, you know, we're thinking through
 18 what we're going to say and sometimes there's a little
 19 bit of a pause so you have to sort of rely on body
 20 language once in a while.
 21 The other thing is that I -- I can see
 22 when you shake your head or -- one way or the other,
 23 but the court reporter can only take down verbal
 24 responses. So if you do shake your head, you also
 25 have to say something; otherwise, we won't be on the

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<p>1 record. Okay?</p> <p>2 A Understood.</p> <p>3 Q If at any point you need to take a break,</p> <p>4 just let me know and we can do that, as long as</p> <p>5 there's no question pending. And we probably will</p> <p>6 take a couple short breaks, at least, because you'll</p> <p>7 probably be here for a little while. We'll try to be</p> <p>8 as efficient as possible, but we have a lot of</p> <p>9 documents and other things to get through.</p> <p>10 Before we get started, do you have any</p> <p>11 questions for me about the process?</p> <p>12 A No, I do not.</p> <p>13 Q Okay. So I understand that you are the</p> <p>14 human resources director at Kutztown; is that correct?</p> <p>15 Is that your official title?</p> <p>16 A That is correct.</p> <p>17 Q Okay. And how long have you had that</p> <p>18 job?</p> <p>19 A I have been the current director of human</p> <p>20 resources since August of 2020.</p> <p>21 Q Okay. I'm having a little trouble</p> <p>22 hearing you. Are you close enough to the microphone</p> <p>23 and can you hear me okay?</p> <p>24 A I can hear you fine. Is that better?</p> <p>25 Q Okay, good. I can hear you a lot better</p>	<p>1 now, too, and I can see you better also.</p> <p>2 So you said 2020?</p> <p>3 A Yes.</p> <p>4 Q Okay. And prior to that you were also</p> <p>5 working in the human resources office?</p> <p>6 A Yes, prior to that -- I became the</p> <p>7 interim director for human resources operations in</p> <p>8 August of 2019.</p> <p>9 Q Okay. And before that what was your job?</p> <p>10 A Prior to that I was the associate</p> <p>11 director of human resources.</p> <p>12 Q Okay. And how did that process unfold,</p> <p>13 going from one job to the other job? I mean, was it a</p> <p>14 promotion or was it just a reclassification? How did</p> <p>15 that work?</p> <p>16 A In August of 2019 the vice-president of</p> <p>17 academic -- of admin and finance for Kutztown</p> <p>18 University at the time, Jerry Silberman, had retired</p> <p>19 and so the associate vice-president for human</p> <p>20 resources, Sharon Picus, took his role on an interim</p> <p>21 basis and then I took her role in a limited fashion on</p> <p>22 an interim basis in August of '19. And then in August</p> <p>23 of 2020, I became the director of human resources on a</p> <p>24 permanent basis, as she was retiring.</p> <p>25 Q Was that a competitive process? In other</p>
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<p>1 words, did other people apply for the job or was it</p> <p>2 just a -- you know, sort of moving you up?</p> <p>3 A It was not. It was an internal</p> <p>4 promotion.</p> <p>5 Q Okay. All right. So I know that you've</p> <p>6 been at Kutztown for about 20 years; is that right?</p> <p>7 A I'm in my 23rd year now.</p> <p>8 Q Oh, 23rd. Okay. So tell me about your</p> <p>9 career at Kutztown.</p> <p>10 A Do you mean from the start?</p> <p>11 Q Yes.</p> <p>12 A Oh. So I came into the university in</p> <p>13 February of 2020 as a fiscal assistant.</p> <p>14 Q 2020?</p> <p>15 A I'm sorry, 2000.</p> <p>16 Q Okay.</p> <p>17 A In the year 2000 as a fiscal assistant</p> <p>18 and several years after that I was re-classed to a</p> <p>19 fiscal technician and then to a management technician.</p> <p>20 In 2008 I became the manager of payroll</p> <p>21 and in 2015, I believe, the assistant director of</p> <p>22 human resources. And I remained in that until 2019 --</p> <p>23 early in 2019 when I became the associate director</p> <p>24 through the re-class process. Each of those</p> <p>25 promotions was through the re-class process.</p>	<p>1 Q Okay. So you've been working in human</p> <p>2 resources in some capacity since 2015; is that right?</p> <p>3 A All of my career has been within human</p> <p>4 resources. The payroll function is --</p> <p>5 Q Payroll is part of that?</p> <p>6 A Yes.</p> <p>7 Q Okay. And in terms of human resources</p> <p>8 management, not counting payroll, you've been in --</p> <p>9 you've been doing that since 2015; is that correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. Tell me what kind of formal</p> <p>12 education or training you have in human resources.</p> <p>13 A I have a bachelor's from Kutztown in</p> <p>14 political science and a master's in public</p> <p>15 administration from Kutztown.</p> <p>16 Q Okay. And as part of either one of those</p> <p>17 things, formal training, does either one -- I'm sorry,</p> <p>18 let me back up.</p> <p>19 Do either one of those things include</p> <p>20 formal training on human resources management?</p> <p>21 A Yes, the master's of public</p> <p>22 administration program includes human resources</p> <p>23 management.</p> <p>24 Q Okay. And what kinds of things does it</p> <p>25 include?</p>

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<p>1 A The human resources management course</p> <p>2 work covers things like hiring and selection and</p> <p>3 recruitment and Fair Labor Standards Act and FMLA and</p> <p>4 ADA. Pretty much a broad range of the entire human</p> <p>5 resources function.</p> <p>6 Q Tell me about the formal training with</p> <p>7 regard to the ADA.</p> <p>8 A There is a segment within that course</p> <p>9 that speaks to the ADA.</p> <p>10 Q Okay. When you say "that course," do you</p> <p>11 mean the curriculum or do you mean a course within the</p> <p>12 curriculum?</p> <p>13 A So within the curriculum there is a</p> <p>14 specific human resources management course and within</p> <p>15 that course work for that class there is a segment on</p> <p>16 ADA.</p> <p>17 Q And how much of the course is focused on</p> <p>18 the ADA?</p> <p>19 A It was a chapter in the book.</p> <p>20 Q Okay. Other than that, have you had any</p> <p>21 other formal training on the ADA?</p> <p>22 A I had -- I participated in a training</p> <p>23 provided by state system legal on the ADA in the</p> <p>24 summer of 2020 and then there was another one again in</p> <p>25 the summer of 2021.</p>	<p>1 Q All right. And what were those -- what</p> <p>2 did they -- well, first of all, tell me how long they</p> <p>3 were.</p> <p>4 A They were -- I don't remember</p> <p>5 specifically how long they were.</p> <p>6 Q I mean, was it a number of hours or a</p> <p>7 number of days --</p> <p>8 A Oh.</p> <p>9 Q -- or weeks?</p> <p>10 A No. No, it was -- it was within a day.</p> <p>11 Q Okay. So some portion of the day --</p> <p>12 A Uh-huh.</p> <p>13 Q -- in 2020, 2021?</p> <p>14 A Uh-huh.</p> <p>15 Q Anything other than that?</p> <p>16 A No.</p> <p>17 Q Okay.</p> <p>18 MS. McKINLEY: Kathy, could you send her</p> <p>19 Exhibit 4.</p> <p>20 MS. LE: Yes.</p> <p>21 MS. McKINLEY: I'm going to close my</p> <p>22 door.</p> <p>23 BY MS. McKINLEY:</p> <p>24 Q Ms. Weidman, what's going to happen when</p> <p>25 I refer to a document, Kathy will send it to you and</p>
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<p>1 then you can open it up. If you have any problems</p> <p>2 with it, let me know. Okay.</p> <p>3 So what I'm showing you we marked as SO</p> <p>4 Exhibit 3 last week and this is Kutztown's Division of</p> <p>5 Equity and Compliance organizational chart. And I</p> <p>6 just want you to tell me a little bit about -- first</p> <p>7 of all, it looks like you're a direct report to Jesus</p> <p>8 Pena who's the vice-president of the division; is that</p> <p>9 right?</p> <p>10 A Kathy, did you -- I don't see Exhibit 4.</p> <p>11 MS. LE: Sorry, I sent you -- and,</p> <p>12 Lorrie, just so you know, I tried to streamline the</p> <p>13 process by going ahead and sending Jennifer the</p> <p>14 exhibits that you sent me Friday, but then I did just</p> <p>15 send her Exhibit 4 so --</p> <p>16 MS. McKINLEY: Okay.</p> <p>17 MS. LE: You should have received a</p> <p>18 second email from me, Jennifer, that just is titled</p> <p>19 Exhibit 4.</p> <p>20 A Yes, I have that.</p> <p>21 BY MS. McKINLEY:</p> <p>22 Q Okay, good. So you report directly to</p> <p>23 Jesus Pena; is that correct?</p> <p>24 A That is correct.</p> <p>25 Q Okay. And how long have you been</p>	<p>1 reporting to him?</p> <p>2 A Since August of 2020.</p> <p>3 Q Okay. And prior to that did you work</p> <p>4 with him at all, other than in a reporting capacity?</p> <p>5 A I -- prior to that I had some interaction</p> <p>6 with his office on a limited basis.</p> <p>7 Q Okay. So was there a reorganization or</p> <p>8 how did that all work out?</p> <p>9 A Yes. So in August 2020, with the</p> <p>10 announced retirement of my former supervisor, Sharon</p> <p>11 Picus, there was a reorganization where HR was moved</p> <p>12 under the Division of Equity and Compliance under Mr.</p> <p>13 Pena.</p> <p>14 Q Okay. So how frequently do you consult</p> <p>15 with him?</p> <p>16 A Very frequently on a variety of -- on any</p> <p>17 variety of topics.</p> <p>18 Q Okay. Is it like a daily basis or ...</p> <p>19 A Some weeks it's daily and some weeks</p> <p>20 it's, you know, a couple times a week.</p> <p>21 Q Okay. And with regard to your role as HR</p> <p>22 director with regard to implementation of the ADA,</p> <p>23 what, if any, communication do you have with him about</p> <p>24 that? And I mean right now, just general, in general.</p> <p>25 A In general, I would say it's limited,</p>

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<p>1 unless there's something -- unless there's some kind 2 of a question.</p> <p>3 Q And has he provided you with any 4 materials or any written expectations as to what that 5 implementation process is supposed to look like?</p> <p>6 A No.</p> <p>7 Q And to what extent do you report to him 8 or confer with him in terms of the implementation of 9 the ADA in your capacity?</p> <p>10 A Again, if it's something that's out of 11 the ordinary or anything where there's a question, I 12 would consult with him, but if it's a -- you know, a 13 standard request, then I -- you know, I don't 14 necessarily seek his approval before approving those.</p> <p>15 Q Okay. So what is your role with regard 16 to implementation of the ADA at Kutztown?</p> <p>17 A So Alexis Martin in my office, when those 18 requests are sent to our -- forwarded to our office 19 from disability services, she will review those and 20 she would generally work with the employee and the 21 supervisor to facilitate that interactive process and 22 then those come to me for approval. And if there's 23 any sort of a question, you know, in that interactive 24 process, those come to me as well.</p> <p>25 Q So are you her supervisor?</p>	<p>1 A Yes, I am.</p> <p>2 Q Okay. So what kind of training have you 3 provided her with regard to her role in the 4 interactive process?</p> <p>5 A She also has had some ADA training as 6 well.</p> <p>7 Q What kind of training?</p> <p>8 A I don't remember off the top of my head 9 which -- you know, which she -- which trainings she 10 had prior to my becoming the director of human 11 resources since she, you know, would have reported to 12 my former supervisor at the time.</p> <p>13 Q Well, how does she know what your 14 expectations are?</p> <p>15 A Because we discuss those.</p> <p>16 Q And -- okay. So you said you haven't 17 given her any materials or training. So I'm trying to 18 understand how you communicate with her what the 19 expectations are for the interactive process and how 20 you supervise that process in terms of how she's 21 conducting it.</p> <p>22 MS. LE: Objection to form.</p> <p>23 A So if I may back up. She also had 24 attended those PASSHE trainings on the ADA. I was 25 speaking to what her history of training might have</p>
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<p>1 been before that, before I took over as her 2 supervisor.</p> <p>3 BY MS. McKINLEY:</p> <p>4 Q So it sounds like you don't actually 5 know.</p> <p>6 A I don't remember --</p> <p>7 MS. LE: Objection.</p> <p>8 A -- off the top of my head.</p> <p>9 BY MS. McKINLEY:</p> <p>10 Q Okay. So what kinds of documentation is 11 she required to maintain with regard to requests for 12 accommodation that she handles?</p> <p>13 A So the way the process works is an 14 employee makes that request through our disability 15 services office and provides all the documentation, 16 the medical documentation and so forth, along with 17 their request for accommodation.</p> <p>18 The disability services director reviews 19 that to see that it conforms to the criteria under the 20 ADA; and, if so, then that is forwarded to human 21 resources to review the actual accommodation request 22 itself for reasonableness and works with the employee 23 and the supervisor in that interactive process at that 24 point.</p> <p>25 Q So are you ordinarily involved in that</p>	<p>1 process?</p> <p>2 MS. LE: Objection to form.</p> <p>3 MS. McKINLEY: Let me rephrase it.</p> <p>4 BY MS. McKINLEY:</p> <p>5 Q Under ordinary circumstances, it sounds 6 like what you're telling me is that she handles that 7 mostly independently; is that correct?</p> <p>8 A That would be correct.</p> <p>9 Q Okay. So under what circumstances would 10 you have personal involvement in the interactive 11 process?</p> <p>12 A I would only be involved when there is 13 some question or if there is some issue, say, in the 14 interactive process between the employee and the 15 supervisor or if there is some sort of a larger issue.</p> <p>16 Q So tell me step by step what you expect 17 the interactive process to look like when she handles 18 it on her own.</p> <p>19 A Again, when that request comes into our 20 office, she reviews it and then she would reach out to 21 the supervisor to discuss and then to the employee and 22 facilitate that conversation back and forth as might 23 be necessary. She would involve me if there was any 24 kind of a question or issue with that process.</p> <p>25 Q Okay. What kind of documentation does</p>

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<p>1 she maintain to -- with regard to what happens in the</p> <p>2 process, like who talks to whom, what happens?</p> <p>3 A She would maintain those emails and notes</p> <p>4 that --</p> <p>5 Q Do you know what she maintains?</p> <p>6 A That's what I'm saying. She would -- she</p> <p>7 would maintain those emails and notes that would go</p> <p>8 with that request.</p> <p>9 Q That's your expectation; is that correct?</p> <p>10 A That is my expectation.</p> <p>11 Q Is there anything else that you expect</p> <p>12 her to maintain in the way of documentation with</p> <p>13 regard to specific accommodation requests?</p> <p>14 A Anything that would pertain to that</p> <p>15 request.</p> <p>16 Q And do you ever review the files to make</p> <p>17 sure that they comply with those expectations?</p> <p>18 A I have not needed to.</p> <p>19 Q How do you know?</p> <p>20 A I'm sorry?</p> <p>21 Q I said, "How do you know?"</p> <p>22 A How do I --</p> <p>23 Q How do you know what she's doing if you</p> <p>24 haven't looked at any of the files?</p> <p>25 A Because those requests come to me for</p>	<p>1 signature and approval before they actually are</p> <p>2 implemented.</p> <p>3 Q Okay. So you have to sign off on every</p> <p>4 accommodation is what you're saying?</p> <p>5 A That is correct.</p> <p>6 Q Okay. So other than the form that you</p> <p>7 sign when you do that, do you receive a file to inform</p> <p>8 you this is what the process looked like and what the</p> <p>9 basis is and we're either granting or denying the</p> <p>10 accommodation?</p> <p>11 A So we discuss those when those forms come</p> <p>12 to me.</p> <p>13 Q Every time?</p> <p>14 A Yes.</p> <p>15 Q About how many requests for reasonable</p> <p>16 accommodation do you get in the course of a typical</p> <p>17 year?</p> <p>18 A In the course of a typical year, very</p> <p>19 few.</p> <p>20 Q Okay. Is anyone else involved in that</p> <p>21 process, the interactive process in the granting or</p> <p>22 denying of accommodations, other than what you've told</p> <p>23 me about so far?</p> <p>24 A No.</p> <p>25 Q All right. I'm just going to go through</p>
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<p>1 some of the exhibits. So if you take a look at</p> <p>2 Exhibit 6.</p> <p>3 MS. LE: I have to send it to her.</p> <p>4 I sent it over, Jennifer.</p> <p>5 A I'm just waiting for it to come through.</p> <p>6 BY MS. McKINLEY:</p> <p>7 Q Okay. Do you have it?</p> <p>8 A I do not. I'm still waiting for it to</p> <p>9 come through.</p> <p>10 Q Okay.</p> <p>11 A Sorry.</p> <p>12 Q Just let me know when you get it.</p> <p>13 A Um-hum.</p> <p>14 Okay, I have it.</p> <p>15 Q You've got it. Okay. So does this look</p> <p>16 like the -- some materials from the website with</p> <p>17 regard to the role of disability services?</p> <p>18 A This does.</p> <p>19 Q Okay. So it talks about how DSO is</p> <p>20 responsible for coordinating disability services for</p> <p>21 students, employees, university guests and so on.</p> <p>22 So other than what you already told me</p> <p>23 about, the DSO, I guess, evaluates whether the person</p> <p>24 has a disability; is that right?</p> <p>25 A Correct.</p>	<p>1 Q Okay. So if DSO decides -- and I'm</p> <p>2 talking about the employment context right now.</p> <p>3 A Um-hum.</p> <p>4 Q So if DSO decides that the person does</p> <p>5 not have a disability that qualifies for the</p> <p>6 protection of the ADA or a Section 504, would they</p> <p>7 send that to you -- would they send the referral -- or</p> <p>8 the request to you or would it stop there?</p> <p>9 A I'm trying to remember if I've ever</p> <p>10 gotten one from them that said someone didn't meet the</p> <p>11 criteria. I don't remember if they have ever sent me</p> <p>12 one where someone did not meet the criteria.</p> <p>13 Q Okay. So of the ones that you have</p> <p>14 received, have you basically assumed that based on</p> <p>15 DSO's initial evaluation that the person does meet the</p> <p>16 criteria for disability under the ADA?</p> <p>17 A When we get that request forwarded to us,</p> <p>18 it says, you know, this employee has submitted this</p> <p>19 accommodation request and the documentation and we</p> <p>20 have reviewed it and it meets the criteria of a</p> <p>21 disability under the ADA.</p> <p>22 Q Okay. So there would be no dispute about</p> <p>23 that, in other words?</p> <p>24 A Correct.</p> <p>25 Q Now, I see that DSO has a lot of</p>

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<p>1 involvement with accommodations for students. Do you 2 have any involvement with that or not? 3 A No. 4 Q So if you take a look at Exhibit 8 -- or, 5 I'm sorry, Exhibit 9 -- no -- yeah, Exhibit 9. 6 (SO Exhibit Number 9 produced and marked 7 for identification.) 8 MS. LE: That should be in the initial 9 email I sent you this morning, Jennifer. 10 A Yes. 11 MS. LE: 9 on will be in that email. 12 A Okay. 13 BY MS. McKINLEY: 14 Q Do you have it? 15 A Yes, I do. 16 Q Oh, okay. I can't tell unless you tell 17 me -- 18 A I'm sorry. 19 Q -- you have it or you don't have it. 20 A Yes. 21 Q Sometimes I try to read people's faces, 22 but it's a little difficult to do on Zoom. 23 All right. So if you look at pages 6 to 24 8 at the end of the exhibit. 25 A Okay.</p>	<p>1 Q And so -- okay, I'm sorry, those are for 2 student accommodations. I was looking for the 3 definition. 4 Oh, I'm sorry, I really was meaning to 5 look at Exhibit 10. I apologize. 6 (SO Exhibit Number 10 produced and marked 7 for identification.) 8 BY MS. McKINLEY: 9 Q Who maintains the HR website? 10 A Who maintains the HR website? One of my 11 staff does. 12 Q Okay. And does that -- does the 13 information that you put on the website have to be 14 approved by anyone or do you guys handle it pretty 15 much independently? 16 A In general, that's done independently. 17 Q I'm sorry, I didn't hear you. 18 A I'm sorry. In general, that is done 19 independently. Each department puts their own 20 information out there. 21 Q Okay. So Exhibit 10, do you have that in 22 front of you? 23 A Yes. 24 Q Okay. So it says that you're a strategic 25 partner with the university leadership to develop and</p>
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<p>1 deliver innovative, fiscally responsible human 2 resources programs and services. 3 Tell me what that entails, if anything, 4 that we haven't already talked about with regard to 5 the disability implementation -- disability rights 6 implementation for employees? Is there anything else? 7 MS. LE: Objection to form. You can 8 answer. 9 A So, I'm sorry, I'm not sure I understand. 10 BY MS. McKINLEY: 11 Q I'm asking you in -- under that umbrella 12 of the strategic partnership with the university 13 leadership -- well, first of all, tell me what the 14 university leadership means. 15 A The administration, the president, and 16 the cabinet. 17 Q Okay. So in relation to the 18 administration of the ADA, for instance, under what 19 circumstances would you have communication with the 20 president? 21 A In general, for an ordinary ADA request, 22 we wouldn't typically, unless it was an ADA request 23 for a direct report of his. 24 Q Right. Okay. And has that -- have you 25 had any communication with the president with regard</p>	<p>1 to ADA implementation during the last two years? 2 A Directly with him, not specifically about 3 ADA, but in terms of remote -- the conversion of 4 in-person classes to online. 5 Q You're talking about the request made by 6 immune-compromised employees who are requesting remote 7 teaching accommodations; is that right? 8 MS. LE: Objection to form. 9 A Not specifically immune-compromised 10 employees. 11 BY MS. McKINLEY: 12 Q Okay. So who are we talking about then? 13 A Any faculty member who had requested to 14 convert in-person classes to online remote teaching. 15 Q Okay. And how many are we talking about? 16 And I'm talking about under the ADA. 17 A Under the ADA? 18 Q Yes. 19 A There were three at the time. 20 Q What time? 21 A In the period prior to the fall 22 semester -- prior to the start of the fall semester. 23 Q Of this academic year? 24 A I'm sorry, in the period prior to the 25 fall 2021 semester.</p>

7 (Pages 22 to 25)

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<p>1 Q Okay. So before we get too far into 2 that, I'd like you to take a look at Exhibit 11. 3 (SO Exhibit Number 11 produced and marked 4 for identification.) 5 A Okay. 6 BY MS. McKINLEY: 7 Q So tell me about this because I -- I know 8 that there was a separate process, a flexible work 9 arrangement process, during the last academic year. 10 So tell me about that and how it differs from the ADA 11 process. 12 A That is correct. This was separate and 13 distinct from the ADA process. For the 2020-2021 14 academic year, the state system -- the Pennsylvania 15 State System of Higher Education implemented a -- what 16 they called a framework for university operations 17 which allowed this concept of a flexible work 18 arrangement, wherein the employee would make the 19 request -- and it wasn't necessarily for remote work 20 specifically, but in most cases that's what it 21 involved, and they would provide documentation of the 22 reason behind the request. 23 And if it met certain criteria and there, 24 you know -- and there weren't operationally -- or it 25 could be done under whatever arrangement they were</p>	<p>1 requesting, then those were approved. 2 Q Okay. So in order to be eligible for a 3 flexible work arrangement last year, the individual 4 did not have to meet the criteria for a disability 5 under the ADA; is that right? 6 A That is correct. It was a broader sort 7 of qualification. 8 Q I'm sorry -- oh, you said broader? 9 A It was broader than strict ADA. 10 Q Okay. So tell me what that means. 11 A So this was if they -- if they were at 12 risk of severe illness, if they met the criteria under 13 the CDC guidance at the time, they could request 14 remote work or a flexible work arrangement and -- and 15 in general those would be approved, again, depending 16 on the work and the operational need and so forth. 17 Q Okay. So who approved those? 18 A Those came through my office as well. 19 Q Okay. But who in your office approved 20 them or disapproved them? 21 A I did. 22 Q You did yourself? 23 A Yes. 24 Q Okay. 25 A Well, I'm sorry, let me back up there.</p>
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<p>1 Those were reviewed with the vice-president or cabinet 2 member over each of those divisions to approve whether 3 or not the work was operationally feasible. 4 Q How many tenured faculty last year taught 5 their classes remotely under a flexible work 6 arrangement? 7 A When you say "last year," do you mean -- 8 Q I mean -- 9 A -- the academic year? 10 Q -- 2020 to '21. 11 A I couldn't tell you off the top of my 12 head the number of tenured faculty. 13 Q Well, do you know how many faculty in 14 general received a flexible work arrangement to teach 15 remotely last year? 16 A Again, I couldn't tell you the exact 17 number. 18 Q Well, was it over a hundred? 19 A I believe so, yes. 20 Q Was it over 150? 21 A I wouldn't be able to give you an exact 22 answer. 23 Q Okay. So in terms of the approval 24 process for them to teach their classes remotely, 25 what, if anything, did they have to provide in the way</p>	<p>1 of documentation that they could meet the learning 2 objectives for their courses? 3 A I'm sorry, could you repeat that? 4 Q Yes. You said that they would come to 5 you with the documentation that made them potentially 6 eligible under the CDC guidance. 7 And my question now is: What, if 8 anything, did you require them to provide to show that 9 they would be able to meet the learning objectives or 10 outcomes for the classes that they're asking to teach 11 remotely? 12 A They did not provide information to human 13 resources about how they would meet learning 14 objectives. They simply provided medical 15 documentation to human resources and then human 16 resources provided a list of the faculty involved and 17 the specific accommodation -- or specific arrangement 18 they were requesting to the -- to the provost and the 19 dean in question and the dean and provost approved or 20 disapproved those requests based upon that 21 information. 22 Q Okay. In the psychology department, do 23 you know whether the dean or the provost denied any of 24 the requests for faculty flexible work arrangements to 25 teach remotely last year?</p>

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<p>1 A I don't remember off the top of my head.</p> <p>2 Q Would that documentation be available in</p> <p>3 your office? Do you keep records?</p> <p>4 A Yes.</p> <p>5 Q Okay. So if you look at the last page of</p> <p>6 that exhibit -- actually, I guess it's a page that</p> <p>7 didn't get numbered. But in any case, where it says</p> <p>8 "Dear campus community," and it doesn't have a date on</p> <p>9 it, am I correct that this was the letter that was</p> <p>10 sent out informing people about the flexible work</p> <p>11 arrangements during the 2020 to '21 school year?</p> <p>12 A 2020-2021, yes.</p> <p>13 Q Okay. All right. So it talks about if</p> <p>14 the person has a disability under the ADA that was a</p> <p>15 different process --</p> <p>16 A Yes.</p> <p>17 Q -- right?</p> <p>18 Okay. So last year did anyone go through</p> <p>19 the ADA process for remote teaching accommodation as</p> <p>20 opposed to the flexible work arrangement?</p> <p>21 A I remember that there were some faculty</p> <p>22 who went through the ADA process at that time. I</p> <p>23 don't specifically remember which ones or what their</p> <p>24 specific accommodations were.</p> <p>25 Q Did you deny any of them?</p>	<p>1 A Again, I don't remember specifically who</p> <p>2 was involved or any of their details.</p> <p>3 Q Okay. You said that three people applied</p> <p>4 for remote teaching accommodations this year. Last</p> <p>5 year, with regard to the ADA process, was it more or</p> <p>6 less?</p> <p>7 A Again, I don't remember specifically how</p> <p>8 many were involved in 2020-2021.</p> <p>9 Q Okay. So let's turn our attention to Dr.</p> <p>10 Oross. What was the first communication you had with</p> <p>11 him pertaining to his plans to request a remote</p> <p>12 teaching accommodation?</p> <p>13 A I first became aware of his request to</p> <p>14 teach -- of his plans to request remote accommodation</p> <p>15 in early August.</p> <p>16 Q So let's take a look at Exhibit 12.</p> <p>17 (SO Exhibit Number 12 produced and marked</p> <p>18 for identification.)</p> <p>19 A Okay.</p> <p>20 BY MS. McKINLEY:</p> <p>21 Q Okay. So the first page of this exhibit</p> <p>22 is an email from Dr. Oross dated August 2nd, 2021.</p> <p>23 A Um-hum -- yes.</p> <p>24 Q Was this the very first time you</p> <p>25 communicated with him about his situation?</p>
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<p>1 A I don't remember specifically if I had</p> <p>2 any direct communication with him prior to that date.</p> <p>3 Q Did you have any communication with the</p> <p>4 dean or the chair of the department?</p> <p>5 A The dean of liberal arts and sciences had</p> <p>6 forwarded an email to me in late July.</p> <p>7 Q And what did he say?</p> <p>8 A It was a forwarded copy of an email with</p> <p>9 several faculty on where Dr. Oross, I believe,</p> <p>10 indicated he wanted to request to convert his classes</p> <p>11 to online for fall.</p> <p>12 Q He was already scheduled to teach two of</p> <p>13 his classes online, wasn't he?</p> <p>14 MS. LE: Objection to form.</p> <p>15 A Again, I don't remember how many of his</p> <p>16 classes were in person or online.</p> <p>17 BY MS. McKINLEY:</p> <p>18 Q Well, you recall, don't you, that some of</p> <p>19 his classes were already scheduled to be online?</p> <p>20 MS. LE: Objection to form.</p> <p>21 A Again, I don't remember what his schedule</p> <p>22 was prior to his request.</p> <p>23 BY MS. McKINLEY:</p> <p>24 Q Well, you're the one that denied his</p> <p>25 accommodation, right?</p>	<p>1 A Correct.</p> <p>2 Q Okay. And it was a denial of the</p> <p>3 accommodation altogether, right? He wasn't allowed to</p> <p>4 teach any classes.</p> <p>5 A The request was to convert in-person</p> <p>6 classes to online and that was the request that was</p> <p>7 denied.</p> <p>8 Q All right. So let's look at this first</p> <p>9 email that says "Unfortunately, I find myself in a</p> <p>10 position of having to request approval to teach the</p> <p>11 classes remotely."</p> <p>12 What was your understanding of the reason</p> <p>13 that he was making that request?</p> <p>14 A From reading -- seeing prior emails and</p> <p>15 being aware of his leave status in the spring</p> <p>16 semester, I understood that he had a heart transplant</p> <p>17 in the spring semester of 2021 and could not come back</p> <p>18 into the classroom because of his immune-suppressed</p> <p>19 state.</p> <p>20 Q I'm sorry, I couldn't hear you. I</p> <p>21 couldn't hear the end of what you said.</p> <p>22 A That he had had a heart transplant during</p> <p>23 the spring semester of 2021 and could not come back</p> <p>24 into the classroom in the fall of 2021 because of his</p> <p>25 immune-suppressed state.</p>

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<p>1 Q And you don't dispute, do you, that he</p> <p>2 qualified as a person with a disability under the ADA,</p> <p>3 right?</p> <p>4 A I don't dispute that his</p> <p>5 immune-suppressed state qualifies as a disability</p> <p>6 under the ADA.</p> <p>7 Q In fact, that's what DSO communicated to</p> <p>8 you on August 12th, correct?</p> <p>9 A The DSO indicated that he qualified --</p> <p>10 that he qualified as a person with a disability under</p> <p>11 the ADA.</p> <p>12 Q And you don't dispute that, do you?</p> <p>13 A Correct.</p> <p>14 Q If you take a look at Exhibit 8, you can</p> <p>15 see the DSO email.</p> <p>16 MS. LE: Oh, I have to send that to her.</p> <p>17 MS. McKINLEY: Okay.</p> <p>18 MS. LE: Sent.</p> <p>19 A Okay.</p> <p>20 BY MS. McKINLEY:</p> <p>21 Q All right. So is that the email you're</p> <p>22 referring to, the email from DSO pertaining to Dr.</p> <p>23 Oross?</p> <p>24 A Yes.</p> <p>25 Q Okay. And Linda Lantaff said that his</p>	<p>1 medical provider is recommending a low risk teaching</p> <p>2 environment and to work remotely. Did you think that</p> <p>3 was an unreasonable request under the circumstances of</p> <p>4 his medical situation?</p> <p>5 A Are you asking my opinion?</p> <p>6 Q Yes.</p> <p>7 A My opinion doesn't factor into that.</p> <p>8 Q Well, I'm asking if you thought it was</p> <p>9 unreasonable of him, having had a recent heart</p> <p>10 transplant, to request a remote teaching accommodation</p> <p>11 under the circumstances that he was facing medically</p> <p>12 and with regard to the pandemic.</p> <p>13 MS. LE: Objection to form.</p> <p>14 A And, again, if you're asking my opinion,</p> <p>15 my opinion doesn't factor -- my personal opinion</p> <p>16 doesn't --</p> <p>17 BY MS. McKINLEY:</p> <p>18 Q I get to ask the questions and that's a</p> <p>19 legitimate question and so I'm asking you to answer</p> <p>20 it.</p> <p>21 MS. LE: Objection to form.</p> <p>22 A So, again, you're asking for my personal</p> <p>23 opinion?</p> <p>24 BY MS. McKINLEY:</p> <p>25 Q Yes.</p>
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<p>1 A My personal opinion is that I certainly</p> <p>2 understand his concern about contracting COVID.</p> <p>3 Q Okay. All right. So going back to the</p> <p>4 emails -- I'm sorry to be flipping around like this</p> <p>5 but -- now I lost my place.</p> <p>6 All right. So he had been in touch with</p> <p>7 you on August 2nd in writing and you said that there</p> <p>8 had been some communications earlier than that, I</p> <p>9 think?</p> <p>10 A Yes, there was an email that was</p> <p>11 forwarded to me by the dean.</p> <p>12 Q Okay. And did you have any</p> <p>13 communications with the dean with regard to that</p> <p>14 email?</p> <p>15 A I had a conversation with the dean, not</p> <p>16 specifically about Dr. Oross's request but because he</p> <p>17 had -- he was not the only faculty member to request</p> <p>18 online classes.</p> <p>19 Q Right. You told me there were at least</p> <p>20 -- were there three others or were there three in all?</p> <p>21 A Under the ADA, at that time there were</p> <p>22 three that had requested.</p> <p>23 Q Okay. So at the time that he made his</p> <p>24 request or he first communicated with you, had the</p> <p>25 other two people already made that communication?</p>	<p>1 A I know one had already made that request</p> <p>2 prior and one -- I think it was kind of simultaneous.</p> <p>3 Q I'm sorry, I couldn't hear you.</p> <p>4 A I said one of those had already made the</p> <p>5 request and one of those -- the other one was about</p> <p>6 the same time. They were pretty simultaneous.</p> <p>7 Q Okay. And there had been a decision made</p> <p>8 between you and Jesus Pena with regard to how to</p> <p>9 handle those requests before you received the request</p> <p>10 from Steve -- or from Dr. Oross, correct?</p> <p>11 A There was a conversation about the</p> <p>12 conversion of online classes -- excuse me. There was</p> <p>13 a conversation about the conversion of in-person</p> <p>14 classes to online as it pertained to reasonable</p> <p>15 accommodation.</p> <p>16 Q And the decision was that all of those</p> <p>17 accommodation requests would be denied, correct?</p> <p>18 A The decision made -- excuse me. The</p> <p>19 decision that -- that was discussed was between</p> <p>20 myself, Mr. Pena, Linda Lantaff and university legal</p> <p>21 counsel.</p> <p>22 MS. LE: Well, hold on. The witness</p> <p>23 should not reveal any communications with counsel that</p> <p>24 are privileged.</p> <p>25 MS. McKINLEY: Okay. Well, I didn't ask</p>

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<p>1 her to do that, but in any event --</p> <p>2 MS. LE: No, I understand. I'm just</p> <p>3 cautioning her.</p> <p>4 MS. McKINLEY: I know.</p> <p>5 MS. LE: I wasn't saying you made a</p> <p>6 mistake. I'm just cautioning her that if she's now</p> <p>7 mentioning conversations with counsel, then she</p> <p>8 shouldn't discuss the conversations with counsel; but</p> <p>9 obviously to the extent there's non-privileged</p> <p>10 communications, or something like that, that's fine.</p> <p>11 BY MS. McKINLEY:</p> <p>12 Q First of all, was there -- well, let's</p> <p>13 start at the beginning. Was there more than one</p> <p>14 discussion?</p> <p>15 A With counsel?</p> <p>16 Q No, no. Was there more than one</p> <p>17 discussion about this particular topic?</p> <p>18 A I believe we may have had two</p> <p>19 conversations about it.</p> <p>20 Q And did one of those conversations -- or</p> <p>21 did either of those conversations not involve counsel?</p> <p>22 A I believe the first conversation did not</p> <p>23 and then the second conversation did.</p> <p>24 Q All right. So who was included in the</p> <p>25 first conversation?</p>	<p>1 A Linda Lantaff, myself, Mr. Pena and I</p> <p>2 believe Alexis Martin.</p> <p>3 Q Okay. And when did that conversation</p> <p>4 take place?</p> <p>5 A Late July.</p> <p>6 Q Where did it take place?</p> <p>7 A It was either a phone call or on Zoom.</p> <p>8 Q Okay. And when you had that</p> <p>9 conversation, had Dr. Oross's situation come to light</p> <p>10 or were you talking about the previous requests?</p> <p>11 A I don't specifically think -- I think it</p> <p>12 was at the same time as we were discussing it, not</p> <p>13 necessarily about him specifically but the larger</p> <p>14 question of converting in person to online.</p> <p>15 Q Okay. And the decision was that we're</p> <p>16 not going to do it, right?</p> <p>17 A It was not a decision to outright reject</p> <p>18 any request that came in with that, you know, request</p> <p>19 necessarily because they would each need to be</p> <p>20 reviewed individually on their own merits, but there</p> <p>21 was a decision that such a request, because it would</p> <p>22 so fundamentally alter the course, presented an undue</p> <p>23 hardship or burden on the employer because of the</p> <p>24 impact on our students.</p> <p>25 Q Well, a fundamental hardship is not a</p>
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<p>1 criteria for an employee accommodation under the ADA,</p> <p>2 is it?</p> <p>3 MS. LE: Objection to form.</p> <p>4 A A fundamental alteration from an</p> <p>5 employer's standpoint is not but a hardship or burden</p> <p>6 is.</p> <p>7 BY MS. McKINLEY:</p> <p>8 Q Okay. Well, undue hardship under the ADA</p> <p>9 does not -- for an employee does not include</p> <p>10 fundamental alteration, does it?</p> <p>11 MS. LE: Objection to form.</p> <p>12 A Again, that such a transformation,</p> <p>13 because of an impact on our students, would be an</p> <p>14 undue hardship.</p> <p>15 BY MS. McKINLEY:</p> <p>16 Q In any of those -- in any class?</p> <p>17 A As a general concept.</p> <p>18 Q That's not what your policy says, is it?</p> <p>19 A What policy are you referring to?</p> <p>20 Q Why don't you take a look at Exhibit 13.</p> <p>21 A I'm sorry, 13?</p> <p>22 Q 13, yes.</p> <p>23 (SO Exhibit Number 13 produced and marked</p> <p>24 for identification.)</p> <p>25 BY MS. McKINLEY:</p>	<p>1 Q Do you have it?</p> <p>2 A Yes, I'm looking at it now.</p> <p>3 Q Okay. Tell me when you're ready.</p> <p>4 A Okay.</p> <p>5 Q Okay. Now, it says "Reasonable</p> <p>6 Accommodations for Employees" and it says at the top</p> <p>7 "Kutztown University Policy DIV-002." Have you ever</p> <p>8 seen this document before?</p> <p>9 A Yes.</p> <p>10 Q Okay. How have you seen it?</p> <p>11 A It's in our University Policy Register.</p> <p>12 Q And are you one of the people that's</p> <p>13 responsible for implementing it?</p> <p>14 A Yes.</p> <p>15 Q Okay. So let's look at the "Objective."</p> <p>16 It says "To institute a process for assessing the</p> <p>17 reasonableness of an accommodation and a method of</p> <p>18 record keeping."</p> <p>19 What method of record keeping</p> <p>20 specifically is this policy referring to?</p> <p>21 A I don't know.</p> <p>22 Q Is there another document that lays out</p> <p>23 what the record keeping method is supposed to be?</p> <p>24 A I am unaware of that.</p> <p>25 Q So you have not created a document and</p>

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<p>1 said this is what the method is, this is the criteria, 2 this is what needs to be here or there or anything 3 like that?</p> <p>4 A The policy says that all reasonable 5 accommodation request forms and related documentation 6 will be kept on file by the director of disability 7 services.</p> <p>8 Q Okay. Well, once disability services 9 sends the referral to you, what, if any, documentation 10 do they receive to maintain?</p> <p>11 A They receive a copy of the completed form 12 when a decision is made.</p> <p>13 Q Okay. Do they receive anything else from 14 your office?</p> <p>15 A No, they receive the completed form.</p> <p>16 Q Okay. So other than that, is there any 17 specific method of record keeping in your office with 18 regard to ADA requests?</p> <p>19 A So as I said before, that Alexis, as part 20 of, you know, facilitating that interactive process, 21 would keep those emails and forms together; but once 22 they're completed and I've signed off and the 23 supervisor has signed off, and the employee, that 24 completed form eventually goes back to the disability 25 services office.</p>	<p>1 Q Okay. So I understand that part. With 2 regard to the documentation maintained in your office, 3 is there any kind of checklist? You know, this is 4 what you need to do, A, B, C, D?</p> <p>5 A No, because we don't receive any 6 documentation, other than the email from disability 7 services office saying that somebody meets the 8 criteria.</p> <p>9 Q Okay. So you don't even receive a copy 10 of the accommodation request, do you?</p> <p>11 A No.</p> <p>12 Q If Alexis creates any documentation with 13 regard to an accommodation request, where would that 14 be maintained?</p> <p>15 In other words, is it -- let me ask you. 16 Is it a computer file? Is it a physical file? What 17 is the method?</p> <p>18 A I don't specifically know if she has it 19 printed out in a physical file or just maintains those 20 digitally.</p> <p>21 Q Okay. Well, if Alexis decided to move to 22 -- I don't know -- Paris next week, how would you know 23 where this documentation is?</p> <p>24 A I would look in her computer.</p> <p>25 Q Okay. But you just said you don't know</p>
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<p>1 if it's on the computer or if it's in a physical file. 2 MS. LE: Objection to form.</p> <p>3 A I would look in her computer and her desk 4 drawer.</p> <p>5 BY MS. McKINLEY:</p> <p>6 Q Okay. That doesn't sound like much of a 7 method to me. Is there anything more formalized than 8 that?</p> <p>9 A There is not.</p> <p>10 Q Okay. So it says "The Director of 11 Disability Services" -- we've talked about her -- "the 12 Assistant Vice-President for Human Resources." Who is 13 that?</p> <p>14 A That is what my position was formerly 15 called. This was last reviewed in 2017.</p> <p>16 Q Okay. And the "Deputy to the President 17 for Compliance." That's Pena, right?</p> <p>18 A And, again, he is -- he's now the 19 vice-president of equity compliance.</p> <p>20 Q Okay. So the three of you are 21 responsible for implementing this policy as it's 22 written, correct?</p> <p>23 A Correct.</p> <p>24 Q Okay. So under "Definition" it says 25 "The accommodation is not required if it would cause</p>	<p>1 an undue hardship."</p> <p>2 Where do you see anything in this policy 3 that indicates that fundamental alteration has 4 anyplace whatsoever in the evaluation of a reasonable 5 accommodation for an employee under your own policy?</p> <p>6 A Fundamental alteration in and of itself 7 does not, but the undue hardship that it creates by 8 the effect on our students is what makes that 9 unreasonable.</p> <p>10 Q Where in the policy do you see that?</p> <p>11 A I don't see that written out 12 specifically.</p> <p>13 Q Right. Do you know what part of the ADA 14 the fundamental alteration provision is in?</p> <p>15 A It's under -- it's not under the employer 16 section. It's under the --</p> <p>17 Q Right. It's under public accommodations, 18 correct?</p> <p>19 A I believe so.</p> <p>20 Q Right. So it applies to students, for 21 instance, right?</p> <p>22 A Yes.</p> <p>23 Q Okay. It does not apply to employees, 24 does it?</p> <p>25 MS. LE: Objection to form.</p>

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<p>1 A No.</p> <p>2 BY MS. McKINLEY:</p> <p>3 Q So what is your understanding of the</p> <p>4 actual definition of undue hardship?</p> <p>5 A So undue hardship is where there is, for</p> <p>6 example, a significant cost, an unreasonable cost to</p> <p>7 the employer.</p> <p>8 Q Right.</p> <p>9 A Something that would be so burdensome as</p> <p>10 to make it impossible.</p> <p>11 Q So when Dr. Oross asked to convert two of</p> <p>12 his classes to online, that wouldn't have cost</p> <p>13 Kutztown anything, right?</p> <p>14 MS. LE: Objection to form.</p> <p>15 A At that time we had publicly announced</p> <p>16 that we were returning to in-person operations. The</p> <p>17 university is primarily a brick-and-mortar institution</p> <p>18 and in person is the mode of teaching for the majority</p> <p>19 of our courses. And to alter the delivery of courses</p> <p>20 that were scheduled when students registered for in</p> <p>21 person was felt to not -- not be true to that stated</p> <p>22 objective.</p> <p>23 BY MS. McKINLEY:</p> <p>24 Q Okay. So providing an accommodation to</p> <p>25 one person would not change the primary mode of</p>	<p>1 operation with regard to in-person instruction on the</p> <p>2 university level, correct?</p> <p>3 A I can't say.</p> <p>4 Q You don't know, right?</p> <p>5 A I'm sure -- I'm not sure there was a</p> <p>6 question there.</p> <p>7 Q Well, you said you can't say. I'm asking</p> <p>8 you if that means you don't know.</p> <p>9 A What was the original question?</p> <p>10 Q I don't know what the original question</p> <p>11 was, but you said, "I can't say." I said making an</p> <p>12 accommodation for one person wouldn't change the</p> <p>13 overall in-person character of the university, would</p> <p>14 it?</p> <p>15 A The feeling is that we wanted to honor</p> <p>16 that commitment to our students that --</p> <p>17 Q Whose feeling?</p> <p>18 A The university leadership had made this</p> <p>19 commitment to students.</p> <p>20 Q So they made a -- did they make a</p> <p>21 commitment to not provide reasonable accommodations to</p> <p>22 someone who needed a remote teaching accommodation,</p> <p>23 even if it wouldn't change the overall character of</p> <p>24 the in-person university?</p> <p>25 A No. I mean, as part of making that</p>
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<p>1 commitment to students, there was not a decision that</p> <p>2 therefore we're going to ignore everything else.</p> <p>3 Q Well, how many faculty do you have at</p> <p>4 Kutztown?</p> <p>5 A We have just over 400.</p> <p>6 Q And how many courses are offered every</p> <p>7 year --</p> <p>8 A I don't know.</p> <p>9 Q -- approximately?</p> <p>10 It's several -- it's more than 10,000,</p> <p>11 right?</p> <p>12 A It's a lot.</p> <p>13 Q Okay. And Dr. Oross was asking to</p> <p>14 convert two of his classes to online, right?</p> <p>15 MS. LE: Objection to form.</p> <p>16 A And, again, I don't remember how many</p> <p>17 were scheduled in person and how many were scheduled</p> <p>18 online.</p> <p>19 BY MS. McKINLEY:</p> <p>20 Q Well, if he was scheduled to teach some</p> <p>21 of his classes online, there wouldn't have been any</p> <p>22 kind of conversion required, right?</p> <p>23 A Correct.</p> <p>24 Q There wouldn't have been any kind of</p> <p>25 accommodation needed with those classes, correct?</p>	<p>1 A Correct.</p> <p>2 Q In fact, under your own policy it says</p> <p>3 "All reasonable employment accommodations that do not</p> <p>4 pose an undue hardship will and must be made for any</p> <p>5 individual with a disability."</p> <p>6 That's your understanding of what the</p> <p>7 policy is supposed to provide, correct?</p> <p>8 A Correct.</p> <p>9 Q I'm just going back to the emails now.</p> <p>10 We're on Exhibit 12.</p> <p>11 A Okay.</p> <p>12 Q Okay. So I'm looking at the second page.</p> <p>13 A Yes.</p> <p>14 Q So the first email was August 2nd and</p> <p>15 this one is August 8th. Why did it take six days to</p> <p>16 get back to him?</p> <p>17 A So August is the busiest time of the year</p> <p>18 in human resources as we are off-boarding faculty for</p> <p>19 not teaching in the fall and we are on-boarding all</p> <p>20 new faculty.</p> <p>21 At this same time our office was in</p> <p>22 transition and we were moving from one building to</p> <p>23 another. So there was a significant disruption to our</p> <p>24 activities, which is why I was answering emails on a</p> <p>25 Sunday night.</p>

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<p>1 Q Okay. So between August 2nd and August</p> <p>2 8th, did you talk to anyone else about Dr. Oross's</p> <p>3 request?</p> <p>4 A I don't remember off the top of my head</p> <p>5 who I talked to.</p> <p>6 Q Okay. So you say in this email "Changing</p> <p>7 the modality of a course from in person to online</p> <p>8 would be considered a fundamental alteration."</p> <p>9 You didn't know what courses he was</p> <p>10 teaching, did you?</p> <p>11 MS. LE: Objection to form.</p> <p>12 A Specifically which courses, as in the</p> <p>13 course titles or ...</p> <p>14 BY MS. McKINLEY:</p> <p>15 Q Did you have any idea whatsoever what</p> <p>16 classes he was teaching?</p> <p>17 A At the time I'm sure I looked at his</p> <p>18 schedule.</p> <p>19 Q And what criteria did you use to</p> <p>20 determine whether it would be a fundamental alteration</p> <p>21 for any of those classes to be converted to online, to</p> <p>22 the extent that they weren't already online?</p> <p>23 A I'm not sure I understand your question.</p> <p>24 Q Did you make any individualized</p> <p>25 determination based on the classes that he was</p>	<p>1 scheduled to teach in person as to whether there would</p> <p>2 be any kind of deviation from anyone's expectations</p> <p>3 with regard to the learning outcomes for those</p> <p>4 classes?</p> <p>5 A Are you asking if I considered any</p> <p>6 alteration in learning outcomes?</p> <p>7 Q Well, I'm asking you really what, if</p> <p>8 anything, you did to make an individualized</p> <p>9 determination with regard to the specific request he</p> <p>10 was making with regard to the specific courses that he</p> <p>11 was scheduled to teach.</p> <p>12 A A determination in terms of the fact that</p> <p>13 we were converting the modality.</p> <p>14 Q So that's all you needed to know, right?</p> <p>15 A That was the basis.</p> <p>16 Q Okay. So then you said he could continue</p> <p>17 his contiguous FMLA, 15 sick days, two personal days.</p> <p>18 So basically he wasn't going to be teaching at all,</p> <p>19 right?</p> <p>20 MS. LE: Objection to form.</p> <p>21 A So here I'm talking about what his other</p> <p>22 options would be.</p> <p>23 BY MS. McKINLEY:</p> <p>24 Q Right. These are the only options that</p> <p>25 you offered him, correct, that he could use up his own</p>
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<p>1 time and after that he would be on unpaid leave for</p> <p>2 the rest of the semester?</p> <p>3 MS. LE: Objection to form.</p> <p>4 A Correct. His leave options were somewhat</p> <p>5 limited, as he had used 75 days of leave in the spring</p> <p>6 semester and by law he was limited to 90 paid days in</p> <p>7 the calendar year.</p> <p>8 BY MS. McKINLEY:</p> <p>9 Q Okay. So, again, when you wrote that to</p> <p>10 him, did you have any idea that he was already</p> <p>11 scheduled to teach two classes online?</p> <p>12 MS. LE: Objection to form.</p> <p>13 A Again, I can't speak to that as fact</p> <p>14 because I don't know that.</p> <p>15 BY MS. McKINLEY:</p> <p>16 Q You weren't involved in any kind of</p> <p>17 interactive process with Dr. Oross, were you?</p> <p>18 A So this email is prior to his actual</p> <p>19 request.</p> <p>20 Q I'm aware of that. You're already</p> <p>21 telling him that the only option he has is if he uses</p> <p>22 up his own time and if he goes on unpaid leave. You</p> <p>23 never offered him anything else, did you?</p> <p>24 MS. LE: Objection to form.</p> <p>25 A Again, so -- first of all, this was not</p>	<p>1 an ADA response here. I was speaking in general</p> <p>2 terms. And if we're shifting to the discussion around</p> <p>3 his ADA request, I had a later conversation with him</p> <p>4 where we made an alternate offer.</p> <p>5 BY MS. McKINLEY:</p> <p>6 Q You're talking about after the sabbatical</p> <p>7 -- the accommodation request was denied and his</p> <p>8 request for a restoration of health sabbatical was</p> <p>9 also denied, correct?</p> <p>10 A Correct.</p> <p>11 Q So would you agree with me the</p> <p>12 interactive process is supposed to take place before</p> <p>13 the request for accommodation is denied?</p> <p>14 MS. LE: Objection to form.</p> <p>15 A It's a back-and-forth process.</p> <p>16 BY MS. McKINLEY:</p> <p>17 Q Okay. But before you deny a request for</p> <p>18 an accommodation, isn't it true, under your own</p> <p>19 policy, that there is supposed to be an interactive</p> <p>20 process?</p> <p>21 A That --</p> <p>22 MS. LE: Objection.</p> <p>23 A I'm sorry?</p> <p>24 BY MS. McKINLEY:</p> <p>25 Q You can answer.</p>

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<p>1 MS. LE: I was just objecting. You can</p> <p>2 answer.</p> <p>3 A Okay. So we might deny the initial</p> <p>4 request and propose an alternative and then that can</p> <p>5 go back to the employee. You know, that's --</p> <p>6 BY MS. McKINLEY:</p> <p>7 Q Well, that's not answering my question.</p> <p>8 It's really simple. You're the head of HR, right?</p> <p>9 You're the one that's in charge of making sure the ADA</p> <p>10 policy is implemented throughout the university; isn't</p> <p>11 that right?</p> <p>12 A Correct.</p> <p>13 Q Under the policy, isn't it true that</p> <p>14 before a request for accommodation is denied you are</p> <p>15 required to engage in an interactive process?</p> <p>16 A Correct.</p> <p>17 Q Okay. And do you understand that that</p> <p>18 process has legal criteria?</p> <p>19 A Correct.</p> <p>20 Q And you were not involved in that process</p> <p>21 with Dr. Oross before you denied his request for</p> <p>22 accommodation, were you?</p> <p>23 MS. LE: Objection to form.</p> <p>24 A The process was perhaps not as clear-cut</p> <p>25 as it could have been.</p>	<p>1 BY MS. McKINLEY:</p> <p>2 Q Okay. Well, Alexis is the one that</p> <p>3 handled that process for Dr. Oross, isn't she?</p> <p>4 A Alexis was not as directly involved in</p> <p>5 this particular request because of the nature of it.</p> <p>6 Q Because he was requesting a remote</p> <p>7 teaching accomodation because of his heart transplant</p> <p>8 and his immune-suppressed condition, right?</p> <p>9 A Because of his request to convert</p> <p>10 in-person classes to online.</p> <p>11 Q Okay. So because -- you're not disputing</p> <p>12 the medical basis for the request, are you?</p> <p>13 A No.</p> <p>14 Q Okay. So --</p> <p>15 A Excuse me, I'm sorry. We're not</p> <p>16 disputing the fact that he has a medical condition</p> <p>17 meeting the definition of disability under the ADA.</p> <p>18 Q Okay. Did you have any medical basis for</p> <p>19 believing that the doctor's recommendation that he not</p> <p>20 teach in person was not appropriate?</p> <p>21 A No.</p> <p>22 Q So you didn't have a medical consultant</p> <p>23 or anyone else look at the request and say, "Yes, this</p> <p>24 sounds medically correct," or, "No, it doesn't," is</p> <p>25 that right?</p>
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<p>1 A No.</p> <p>2 Q Okay. I'd like you to take a look at</p> <p>3 SO-1.</p> <p>4 MS. LE: I have to send it to her.</p> <p>5 Lorrie, can we take a break --</p> <p>6 MS. McKINLEY: Yes, I was just --</p> <p>7 MS. LE: -- when you have a logical</p> <p>8 stopping point?</p> <p>9 MS. McKINLEY: -- going to say that.</p> <p>10 Sure. Let's just do it after we do this</p> <p>11 document.</p> <p>12 MS. LE: Yep. I just sent it over,</p> <p>13 Jennifer.</p> <p>14 A I'm just waiting for it to come through.</p> <p>15 Still waiting.</p> <p>16 Oh, there it is.</p> <p>17 BY MS. McKINLEY:</p> <p>18 Q Okay. I'm looking at page 3.</p> <p>19 A All right. Just a moment.</p> <p>20 All right. You said page 3, yes.</p> <p>21 Q Okay. So is that -- it says this is a</p> <p>22 "Reasonable Accommodation Confirmation/Resolution Form</p> <p>23 for Employees."</p> <p>24 A Um-hum.</p> <p>25 Q Is that your signature at the bottom?</p>	<p>1 A That is.</p> <p>2 Q Okay. And it says "Denied," and it says</p> <p>3 "Provide rationale." Do you see that?</p> <p>4 A Yes.</p> <p>5 Q Who wrote the language that was inserted</p> <p>6 on this denial form?</p> <p>7 A The language was developed in</p> <p>8 consultation with legal counsel.</p> <p>9 Q Were you involved in writing this?</p> <p>10 A Yes.</p> <p>11 Q Who instructed Alexis to incorporate this</p> <p>12 specific language?</p> <p>13 A I did.</p> <p>14 Q Okay. What documents, if any, did you</p> <p>15 review before you instructed her to put that language</p> <p>16 on this form to deny this accommodation?</p> <p>17 A I'm not sure I know what you mean as far</p> <p>18 as documentation.</p> <p>19 Q Did you review anything at all with</p> <p>20 regard to what Dr. Oross was requesting, what his</p> <p>21 medical situation was, the specific individualized</p> <p>22 circumstances of his -- you know, the basis for his</p> <p>23 request or anything at all? Did you look at anything?</p> <p>24 A I reviewed his request. I was aware of</p> <p>25 his medical circumstances due to his FMLA request the</p>

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<p>1 semester prior. We reviewed his schedule and in</p> <p>2 consultation with Mr. Pena and legal counsel developed</p> <p>3 this language.</p> <p>4 Q Well, you're the one who had the</p> <p>5 responsibility for denying the request, right?</p> <p>6 A Correct.</p> <p>7 Q Okay. Is this the same language that you</p> <p>8 used on the other ones, the other people that had</p> <p>9 requested remote teaching accommodations?</p> <p>10 A If not the same, similar.</p> <p>11 Q And I was a little confused by what you</p> <p>12 said earlier because I thought you told me you had not</p> <p>13 seen his reasonable accommodation request form.</p> <p>14 A I don't remember saying that.</p> <p>15 Q I thought you told me that DSO looks at</p> <p>16 the request and they send you the email but they don't</p> <p>17 send you anything else.</p> <p>18 A They send an email and a blank request</p> <p>19 form -- a blank -- you know, this form here, a blank</p> <p>20 one.</p> <p>21 Q Right. Okay. But you don't see the</p> <p>22 actual request for accommodation; is that correct?</p> <p>23 A Correct.</p> <p>24 MS. McKINLEY: So let's take a break.</p> <p>25 Kathy, Dr. Oross sent me a few additional documents</p>	<p>1 this morning. I'm going to just make copies and email</p> <p>2 them to you.</p> <p>3 MS. LE: Very good.</p> <p>4 (Break taken.)</p> <p>5 BY MS. McKINLEY:</p> <p>6 Q Okay. So before we look at the new</p> <p>7 exhibit -- and your name is on SO-1, page 3, which is</p> <p>8 the denial -- did you talk to Jesus Pena about this</p> <p>9 particular situation with regard to Dr. Oross?</p> <p>10 A (Witness muted.)</p> <p>11 Q We can't hear you. You're muted.</p> <p>12 A I'm sorry. It's almost two years and I</p> <p>13 still haven't got the hang of it.</p> <p>14 So prior to issuing the denial, he had</p> <p>15 been part of those conversations with myself and Linda</p> <p>16 Lantaff and legal counsel.</p> <p>17 Q Did he direct you to deny Dr. Oross's</p> <p>18 accommodation?</p> <p>19 A It was not a direct order, no.</p> <p>20 Q So did you have the authority to grant it</p> <p>21 in spite of the conversations you had with Jesus Pena?</p> <p>22 A Did I have the authority to make that</p> <p>23 decision, yes, that was -- that was my decision.</p> <p>24 Q So you're saying the buck stops with you?</p> <p>25 A Correct.</p>
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<p>1 Q Did you have any conversations with Dr.</p> <p>2 Hawkinson?</p> <p>3 MS. LE: Objection to form.</p> <p>4 A Not specifically prior to issuing the</p> <p>5 denial.</p> <p>6 BY MS. McKINLEY:</p> <p>7 Q Did you have any conversations with Dr.</p> <p>8 Hawkinson before you issued the denial pertaining to</p> <p>9 Dr. Oross?</p> <p>10 A I don't remember any specifically about</p> <p>11 Dr. Oross.</p> <p>12 Q Were you copied on any correspondence</p> <p>13 between you and/or Jesus Pena -- I'm sorry, let me</p> <p>14 start over.</p> <p>15 Were you copied on any correspondence</p> <p>16 between Mr. Pena and Dr. Hawkinson regarding Professor</p> <p>17 Oross before the accommodation was denied?</p> <p>18 A I don't remember.</p> <p>19 Q Would you look at the next page. It says</p> <p>20 "Employee signature" and then it says "Provide a copy</p> <p>21 to DSO." So did you forward this to DSO?</p> <p>22 A I'm sorry, we're still looking at the --</p> <p>23 Q Yeah, SO-1, the denial form. Where is</p> <p>24 this form today?</p> <p>25 A Well, Alexis would have forwarded a copy</p>	<p>1 of the completed form to DSO.</p> <p>2 Q Did you forward a copy of it to Jesus</p> <p>3 Pena?</p> <p>4 A I don't remember having done so. That</p> <p>5 wouldn't have been a normal part of our process.</p> <p>6 Q Did he follow up with you and say, "What</p> <p>7 happened with the Dr. Oross accommodation"?</p> <p>8 A I'm sure that was a conversation we had.</p> <p>9 Q Okay. Can you tell me about that</p> <p>10 conversation.</p> <p>11 A Again, I don't -- I can't remember a</p> <p>12 specific conversation on a specific date, other than,</p> <p>13 you know, a normal sort of update between him and I.</p> <p>14 Q Okay. In any conversation that you had</p> <p>15 with him after you denied the request, did he ever</p> <p>16 say, "Well, maybe we better go back and look at that</p> <p>17 again," or anything along those lines?</p> <p>18 A Not that I recall, no.</p> <p>19 Q Okay. After you denied the</p> <p>20 accommodation, did you have any conversations with Dr.</p> <p>21 Hawkinson about Dr. Oross?</p> <p>22 A I know that we had a conversation at some</p> <p>23 point after -- at some point in time after the denial.</p> <p>24 I can't tell you how close in time it was to the</p> <p>25 denial.</p>

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<p>1 Q Okay. All right. So let's look at</p> <p>2 Exhibit 22.</p> <p>3 (SO Exhibit Number 22 produced and marked</p> <p>4 for identification.)</p> <p>5 MS. LE: Oh, let me -- sorry, I didn't</p> <p>6 get a chance to forward it to Jennifer yet.</p> <p>7 I just sent that over.</p> <p>8 A Okay.</p> <p>9 BY MS. McKINLEY:</p> <p>10 Q Okay. Do you have it?</p> <p>11 A Yeah, it just came through.</p> <p>12 Okay.</p> <p>13 Q All right. So the first page looks like</p> <p>14 an email from Dr. Oross -- oh, okay. So at the very</p> <p>15 top of the page it says 7/30 and it looks like Dr. --</p> <p>16 is it -- how do you pronounce that?</p> <p>17 A Beougher.</p> <p>18 Q Beougher. Shared the July 26 email from</p> <p>19 Dr. Oross which asked some specific questions about</p> <p>20 the safety of campus in relation to his medical</p> <p>21 condition. Do you recall that?</p> <p>22 A Yes.</p> <p>23 Q Okay. Did you look at the link that he</p> <p>24 sent regarding background information with respect to</p> <p>25 immunocompromised people and COVID precautions?</p>	<p>1 A I'm sure I did.</p> <p>2 Q And did you have a conversation with</p> <p>3 anyone about them in relation to Dr. Oross?</p> <p>4 A No, not specifically that I recall.</p> <p>5 Q Okay. So he indicates that he would</p> <p>6 really prefer to come back to campus but he wants to</p> <p>7 know about whether he would be allowed to ask students</p> <p>8 to wear masks in the classroom and you said no, right?</p> <p>9 If you look at the top of page 2.</p> <p>10 A That's not what I said.</p> <p>11 Q You said you can ask them to but you</p> <p>12 can't require it, right?</p> <p>13 A So at this time the university had not</p> <p>14 implemented the mask requirement yet, which was, in</p> <p>15 fact, later so --</p> <p>16 Q Right. So at the time you were -- I'm</p> <p>17 sorry, go ahead.</p> <p>18 A So at this time that I was answering</p> <p>19 this, we said, you know, that faculty could ask their</p> <p>20 students to wear a mask in class but could not compel</p> <p>21 them to do so.</p> <p>22 Q Okay. And when did that change, if it</p> <p>23 did?</p> <p>24 A It did change. I don't remember the</p> <p>25 specific date. It was prior to the start of the</p>
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<p>1 semester.</p> <p>2 Q Did it change before or after Dr. Oross's</p> <p>3 request for accommodation was denied?</p> <p>4 A Again, I don't remember the specific</p> <p>5 date.</p> <p>6 Q Well, when you evaluated the</p> <p>7 accommodation issue before you signed your name, you</p> <p>8 were basing that on the current circumstances on</p> <p>9 campus, correct?</p> <p>10 A That is correct.</p> <p>11 Q Okay. So then you indicate that no, you</p> <p>12 can't ask anyone what their vaccination status is or</p> <p>13 -- right?</p> <p>14 A I'm sorry, is there a question?</p> <p>15 Q You wouldn't have any idea whether --</p> <p>16 what the vaccination status of any of the students in</p> <p>17 the classroom would be, correct?</p> <p>18 A Correct. He asked if he could ask</p> <p>19 them --</p> <p>20 Q And did you understand why that was such</p> <p>21 an important concern for him in light of his recent</p> <p>22 heart transplant?</p> <p>23 A Yes.</p> <p>24 Q And he asked about social distancing.</p> <p>25 You said you can certainly ask someone to stand or sit</p>	<p>1 further away from you when conversing, et cetera, but</p> <p>2 classrooms will be back to normal layouts and</p> <p>3 capacities.</p> <p>4 So he would have no guarantee if he came</p> <p>5 back or no assurance that there would be social</p> <p>6 distancing in the classroom, right?</p> <p>7 A Correct, they were back to the normal</p> <p>8 layout.</p> <p>9 Q And you indicate that there had been no</p> <p>10 changes to the existing HVAC systems, correct?</p> <p>11 A That is correct.</p> <p>12 Q All of these things that you have listed</p> <p>13 on page 22 [sic] were still the case at the time you</p> <p>14 denied his accommodation request, correct?</p> <p>15 A On page 2, correct.</p> <p>16 Q Did you review the EEOC guidance on</p> <p>17 telecommuting or reasonable accommodations for people</p> <p>18 with immune-suppression and immune-compromise?</p> <p>19 A At what point?</p> <p>20 Q At the time we're talking about in the</p> <p>21 end of July.</p> <p>22 A I was aware of them, yes. I don't</p> <p>23 remember that I specifically opened them up and looked</p> <p>24 at them in looking at this.</p> <p>25 Q At the time that you were having this</p>

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<p>1 email exchange, when was the last time you had looked</p> <p>2 at those -- at the EEOC guidance?</p> <p>3 A I don't remember a specific date.</p> <p>4 Q Was it in 2021?</p> <p>5 A I -- again, sometime prior to that, the</p> <p>6 months prior. I don't remember a date.</p> <p>7 Q What about the CDC's guidance for</p> <p>8 institutions of higher education?</p> <p>9 A I am a part of the university's emergency</p> <p>10 management team so that was something that we reviewed</p> <p>11 on a relatively regular basis.</p> <p>12 Q So were you aware that the CDC's guidance</p> <p>13 for IHEs with respect to people with</p> <p>14 immune-compromised, immune-suppression, solid organ</p> <p>15 transplants and other high risk conditions was that</p> <p>16 they be permitted to work remotely to the extent</p> <p>17 possible?</p> <p>18 MS. LE: Objection to form.</p> <p>19 BY MS. McKINLEY:</p> <p>20 Q You are aware of that, right?</p> <p>21 A Yes.</p> <p>22 Q And did you have any conversation with</p> <p>23 Jesus Pena about those recommendations in relation to</p> <p>24 Dr. Oross?</p> <p>25 A No.</p>	<p>1 Q How about with Dr. Hawkinson?</p> <p>2 A No.</p> <p>3 Q So when you -- so how did -- tell me</p> <p>4 procedurally how this document, the denial form, gets</p> <p>5 transmitted to -- well, actually, withdraw that. I'm</p> <p>6 withdrawing the question. I have the emails right</p> <p>7 here.</p> <p>8 So when you officially denied the</p> <p>9 request, you didn't provide Dr. Oross with any</p> <p>10 additional information than you had provided him</p> <p>11 before with regard to his options, right?</p> <p>12 A Correct. We had previously discussed the</p> <p>13 leave options.</p> <p>14 Q Okay. So the only option you offered him</p> <p>15 was using up his time and then leave without pay,</p> <p>16 correct, at that point in time?</p> <p>17 A It seemed clear from the other</p> <p>18 communications that he had this was what he was</p> <p>19 interested in. He was not interested in any other</p> <p>20 sort of operation.</p> <p>21 Q Did he indicate to you at any point in</p> <p>22 time that he was not interested in teaching his online</p> <p>23 classes online?</p> <p>24 MS. LE: Objection to form.</p> <p>25 A I'm sorry, can you repeat that?</p>
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<p>1 BY MS. McKINLEY:</p> <p>2 Q Did he ever indicate to you in any way</p> <p>3 whatsoever that he was not interested in teaching his</p> <p>4 online classes online?</p> <p>5 MS. LE: Objection to form.</p> <p>6 A Exactly. It was my understanding that</p> <p>7 that was his only interest, was teaching his classes</p> <p>8 online.</p> <p>9 BY MS. McKINLEY:</p> <p>10 Q Right, but did you understand that he was</p> <p>11 already scheduled to teach two of his classes online?</p> <p>12 MS. LE: Objection to form.</p> <p>13 A That's not my understanding.</p> <p>14 BY MS. McKINLEY:</p> <p>15 Q Okay. So when you denied the</p> <p>16 accommodation request, it was your understanding that</p> <p>17 he would be using up his time and leave without pay,</p> <p>18 right?</p> <p>19 A Correct.</p> <p>20 Q And it was clear in your mind that you</p> <p>21 didn't think that you had to -- that it was necessary</p> <p>22 to send him anything further to communicate that</p> <p>23 information that you had already communicated,</p> <p>24 correct?</p> <p>25 A Correct.</p>	<p>1 Q Do you know what kind of technology or</p> <p>2 new technology the university had purchased and</p> <p>3 installed to facilitate online instruction from, you</p> <p>4 know, the spring of 2020 forward to the time that</p> <p>5 we're talking about here in July of 2021?</p> <p>6 A I remember that the university purchased</p> <p>7 some number of specialized cameras that were installed</p> <p>8 in a number of classrooms to facilitate the, you know,</p> <p>9 projection of faculty in classrooms and so forth.</p> <p>10 Q Would you take a look at Exhibit 7.</p> <p>11 MS. LE: Jennifer, have I sent you that</p> <p>12 one already?</p> <p>13 A I'm not sure. I'm just trying to see.</p> <p>14 MS. McKINLEY: You know what, we'll come</p> <p>15 back to that one. Don't worry about it. We'll do it</p> <p>16 later.</p> <p>17 MS. LE: Okay. I'll send it for now so</p> <p>18 she'll have it.</p> <p>19 (SO Exhibit Number 14 produced and marked</p> <p>20 for identification.)</p> <p>21 BY MS. McKINLEY:</p> <p>22 Q So please take a look at Exhibit 14.</p> <p>23 A Hold on a second.</p> <p>24 Okay.</p> <p>25 Q Okay. So this is a letter from Dr. Oross</p>

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<p>1 on August 24th to President Hawkinson regarding a</p> <p>2 request for sabbatical leave. Did you have a</p> <p>3 conversation with Dr. Hawkinson about this issue?</p> <p>4 A Yes.</p> <p>5 Q Okay. Did you see a copy of his letter?</p> <p>6 A Yes.</p> <p>7 Q Dr. Oross's letter?</p> <p>8 A Yes.</p> <p>9 Q Okay. So tell me procedurally, first of</p> <p>10 all, how this works in relation to you as the HR</p> <p>11 person in relation to a sabbatical request for</p> <p>12 restoration of health.</p> <p>13 A So this is the first request for a</p> <p>14 sabbatical for restoration of health that has come to</p> <p>15 me during my tenure as HR director. So it's not --</p> <p>16 it's not necessarily there's an established practice</p> <p>17 for that, but the granting of the sabbatical is at the</p> <p>18 president's discretion so --</p> <p>19 Q Is there any policy that says how a</p> <p>20 restoration of health sabbatical -- what the criteria</p> <p>21 are?</p> <p>22 A No.</p> <p>23 Q I understand, and correct me if I'm</p> <p>24 wrong, that the process and criteria for a regular</p> <p>25 sabbatical, an academic sabbatical --</p>	<p>1 A Um-hum.</p> <p>2 Q -- is set out in the union contract; is</p> <p>3 that correct?</p> <p>4 A That is correct.</p> <p>5 Q And are you aware of anything in the</p> <p>6 union contract that pertains to a restoration of</p> <p>7 health sabbatical?</p> <p>8 A No, I believe the contract specifies that</p> <p>9 the faculty member has to be eligible for a regular</p> <p>10 sabbatical in order to be able to request a medical</p> <p>11 sabbatical, but other than that, that's the only</p> <p>12 requirement that I know of.</p> <p>13 Q You mean in terms of longevity with the</p> <p>14 university?</p> <p>15 A In terms of the years of service and</p> <p>16 prior sabbaticals and so forth.</p> <p>17 Q Okay. So other than that, you're saying</p> <p>18 you don't know what, if any, criteria there are to</p> <p>19 guide the discretion with regard to a restoration of</p> <p>20 health sabbatical?</p> <p>21 A Correct.</p> <p>22 Q Okay. So tell me about what happened</p> <p>23 with this particular one.</p> <p>24 A So Dr. Oross submitted it to the</p> <p>25 president, the president discussed it with Mr. Pena</p>
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<p>1 and I and it -- the decision was that the sabbatical</p> <p>2 is intended for the restoration of health and since</p> <p>3 Dr. Oross had been released to be able to teach, only</p> <p>4 in a remote capacity, just not in the classroom, that</p> <p>5 there wasn't any necessarily restoration to be had.</p> <p>6 Q Well, did you have any reason to believe</p> <p>7 that he had -- I guess I'm confused. So you denied</p> <p>8 his accommodation request because his medical</p> <p>9 condition made it impossible for him to come back to</p> <p>10 work on campus, given the pandemic and the issues that</p> <p>11 he was having with immune-suppression and so forth,</p> <p>12 right?</p> <p>13 MS. LE: Objection to form.</p> <p>14 A We denied the accommodation request to</p> <p>15 convert online -- to convert in-person classes to</p> <p>16 online based on the fact that the fundamental</p> <p>17 alteration of those was an undue hardship under the --</p> <p>18 BY MS. McKINLEY:</p> <p>19 Q Okay. Well, I understand that and we</p> <p>20 already talked about why fundamental alteration</p> <p>21 doesn't have anything to do with undue hardship.</p> <p>22 My question is: It was because of his</p> <p>23 medical condition and the needs that he had as a</p> <p>24 result of that condition that you denied the specific</p> <p>25 kind of accommodation that he needed, right?</p>	<p>1 MS. LE: Objection to form.</p> <p>2 A Can you repeat that?</p> <p>3 BY MS. McKINLEY:</p> <p>4 Q Yes. I said it was because of his</p> <p>5 medical condition and the type of accommodations that</p> <p>6 ensued from that that you denied his request for</p> <p>7 accommodation, right?</p> <p>8 MS. LE: Objection to form.</p> <p>9 A No, we denied the request for</p> <p>10 accommodation based on the type of accommodation</p> <p>11 requested and the reasonableness of that.</p> <p>12 BY MS. McKINLEY:</p> <p>13 Q Okay. And that had to do with -- we've</p> <p>14 already established that -- you have no dispute that</p> <p>15 he has a medical condition and that was the basis for</p> <p>16 his request, right?</p> <p>17 A We do not dispute that his medical</p> <p>18 condition qualifies as --</p> <p>19 Q Right. So now he's saying, "Okay, well,</p> <p>20 you're not letting me come back to work. I'd like to</p> <p>21 have a restoration of health sabbatical so maybe --</p> <p>22 you know, hopefully I'll be able to come back to work</p> <p>23 on campus soon," and you're saying that that was not</p> <p>24 satisfactory in relation to what?</p> <p>25 A The sabbatical, as indicated in the</p>

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<p>1 contract, is intended for the restoration of health</p> <p>2 and the decision was that he had been released to</p> <p>3 teach, just not in person, so that was the decision,</p> <p>4 that that wasn't necessarily the restoration.</p> <p>5 Q And what guided that decision?</p> <p>6 A Again, in consultation with legal</p> <p>7 counsel.</p> <p>8 Q Okay. You just told me you talked to</p> <p>9 Hawkinson and Pena, correct?</p> <p>10 A Correct.</p> <p>11 Q Okay.</p> <p>12 A And there was a conversation between -- I</p> <p>13 don't remember specifically if Dr. Hawkinson was on</p> <p>14 the call with university legal counsel or not.</p> <p>15 Q But you did speak with Hawkinson and Pena</p> <p>16 themselves, right?</p> <p>17 A Yes.</p> <p>18 Q Okay. And the decision was made, "No,</p> <p>19 we're not going to give a restoration of health</p> <p>20 sabbatical," right?</p> <p>21 A Correct.</p> <p>22 Q Okay. So you sent this letter to Dr.</p> <p>23 Oross. Did you give him anything -- I'm sorry, let me</p> <p>24 take that back.</p> <p>25 (SO Exhibit Number 15 produced and marked</p>	<p>1 for identification.)</p> <p>2 BY MS. McKINLEY:</p> <p>3 Q Okay. I'm sorry, we're going to go to</p> <p>4 Exhibit 15.</p> <p>5 A I'm sorry, did you say 15?</p> <p>6 Q I did say that, yes.</p> <p>7 A Okay.</p> <p>8 Q Okay. So you said "Dr. Hawkinson has</p> <p>9 reviewed your request for a sabbatical." What kind of</p> <p>10 documentation, if any, was created in relation to the</p> <p>11 denial of the sabbatical, other than the letter which</p> <p>12 we just looked at -- or, I'm sorry, the letter we have</p> <p>13 in front of us?</p> <p>14 A Other than 15?</p> <p>15 Q Yes.</p> <p>16 A That's -- that is the -- there was no</p> <p>17 other letter from the president's office, in other</p> <p>18 words.</p> <p>19 Q Okay. But is there any other</p> <p>20 documentation regarding the evaluation of the</p> <p>21 sabbatical request?</p> <p>22 A No, I do not -- I do not believe so.</p> <p>23 Q Whose job is it to maintain whatever</p> <p>24 documentation there might be regarding a sabbatical</p> <p>25 request for a restoration of health?</p>
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<p>1 A It happens so rarely I don't know that</p> <p>2 there is a formal process built in for us, and there</p> <p>3 may be other -- there may be other processes built in,</p> <p>4 say, in the president's office that I'm unaware of.</p> <p>5 Q You're not involved in it, is that what</p> <p>6 you're saying?</p> <p>7 A Exactly. To the extent that I am</p> <p>8 involved in it, this is the part that I know about.</p> <p>9 Q Okay. You said that you -- in this</p> <p>10 letter you said "Per our telephone conversation</p> <p>11 yesterday" -- I'm assuming you mean with Dr. Oross,</p> <p>12 right?</p> <p>13 A Yes.</p> <p>14 Q What happened during that conversation?</p> <p>15 A So I called him to convey that the</p> <p>16 president was declining to approve his sabbatical for</p> <p>17 the restoration of health and also to make an offer of</p> <p>18 two courses to be taught online that would be the</p> <p>19 subject tbd, to be decided, in consultation with the</p> <p>20 dean and the provost -- excuse me, the dean and the</p> <p>21 department chair to start mid-semester based upon</p> <p>22 student need in the psychology department.</p> <p>23 Q Well, you didn't actually have any</p> <p>24 courses to offer him, did you?</p> <p>25 A Correct. They were to be decided after</p>	<p>1 drop-and-add once they could establish what student</p> <p>2 need was.</p> <p>3 Q Had you talked to the chair of the</p> <p>4 psychology department or the interim chair and say,</p> <p>5 "Is there any kind of need that you see coming up for</p> <p>6 this kind of course"?</p> <p>7 A I did not. That portion of the process</p> <p>8 was being handled under the provost's office between</p> <p>9 the provost and the dean and the department chair.</p> <p>10 Q Okay. So when you encouraged Dr. Oross</p> <p>11 to discuss this was the chair and the dean, did you</p> <p>12 have any reason to believe that they had absolutely no</p> <p>13 idea that this might be going on?</p> <p>14 A It was my understanding that the provost</p> <p>15 was going to be talking to the department chair.</p> <p>16 Q Okay. But would you agree with me that</p> <p>17 you can't actually offer an accomodation for something</p> <p>18 you don't have to offer?</p> <p>19 MS. LE: Objection to form.</p> <p>20 A This was being offered not as an ADA</p> <p>21 accommodation but as a way of meeting student need and</p> <p>22 also offered something to Dr. Oross to be able to</p> <p>23 continue to teach.</p> <p>24 BY MS. McKINLEY:</p> <p>25 Q Okay. Well, I guess the reason I'm</p>

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<p>1 having trouble with your use of the word offer is that</p> <p>2 you didn't have anything in hand to give him, did you?</p> <p>3 A So the way it was framed, and then I</p> <p>4 conveyed to him, to Dr. Oross, was that they would</p> <p>5 review student need and where -- so in other words,</p> <p>6 what -- where courses might be offered in the</p> <p>7 psychology department and they would start</p> <p>8 mid-semester and that would be -- it was to be</p> <p>9 decided. So in the moment that we were having the</p> <p>10 conversation, they were as yet unknown.</p> <p>11 Q Right. And do you have any knowledge of</p> <p>12 the psychology department ever offering those kinds of</p> <p>13 courses mid-semester?</p> <p>14 A I have no knowledge of that, but I</p> <p>15 wouldn't.</p> <p>16 Q And you didn't have any knowledge of it</p> <p>17 then either, did you?</p> <p>18 A Correct. I would not ordinarily have</p> <p>19 knowledge of what kind of courses are given department</p> <p>20 offers.</p> <p>21 Q So you said that Dr. Oross -- this would</p> <p>22 give him the ability to teach half time. He would</p> <p>23 have been teaching half time if he had been able to</p> <p>24 teach his online classes online, right?</p> <p>25 MS. LE: Objection to form.</p>	<p>1 A Again, I'm not sure that he was scheduled</p> <p>2 to teach online for the fall semester.</p> <p>3 BY MS. McKINLEY:</p> <p>4 Q That's a pretty important thing to</p> <p>5 understand in the context of an accommodation denial,</p> <p>6 isn't it?</p> <p>7 MS. LE: Objection to form.</p> <p>8 A And, again, that was the reason that they</p> <p>9 were denied, is the converting from in-person to</p> <p>10 online.</p> <p>11 BY MS. McKINLEY:</p> <p>12 Q How many?</p> <p>13 A I heard you say that he was scheduled to</p> <p>14 teach two online and I'm not certain that that's fact.</p> <p>15 Q Okay. Well, aren't you the one that is</p> <p>16 supposed to know before you sign your name on that</p> <p>17 form?</p> <p>18 MS. LE: Objection to form.</p> <p>19 A Yes, I would have known that at that</p> <p>20 time.</p> <p>21 BY MS. McKINLEY:</p> <p>22 Q Okay. Well, did you review any documents</p> <p>23 in preparation for your deposition today?</p> <p>24 A I did. I reviewed notes.</p> <p>25 Q Okay. And did you review anything to</p>
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<p>1 refresh your recollection as to how many courses Dr.</p> <p>2 Oross was scheduled to teach online or in person for</p> <p>3 the fall semester?</p> <p>4 A I did not review his schedule at the</p> <p>5 time, no.</p> <p>6 Q Okay. So on the next page, Dr. Oross</p> <p>7 wrote back to you on August 30th and he asked you a</p> <p>8 series of questions, right?</p> <p>9 A Uh-huh.</p> <p>10 Q "What would the topic be of the high</p> <p>11 demand courses?"</p> <p>12 Did you think that was a legitimate</p> <p>13 question?</p> <p>14 A It was, and it was in my conversation</p> <p>15 with him that -- we covered that. We didn't know yet</p> <p>16 what those topics would be.</p> <p>17 Q Right. He didn't --</p> <p>18 A That would be decided after drop-and-add.</p> <p>19 (Simultaneous crosstalk.)</p> <p>20 (Court reporter clarification.)</p> <p>21 A So in our conversation we -- I had told</p> <p>22 him that we didn't know yet what those topics would</p> <p>23 be, that that would be to be decided after</p> <p>24 drop-and-add.</p> <p>25 BY MS. McKINLEY:</p>	<p>1 Q In fact, you didn't know whether there</p> <p>2 would be any topics, right?</p> <p>3 A I -- the knowledge that I had was that we</p> <p>4 were offering two courses to be -- to start</p> <p>5 mid-semester after drop-and-add, topic to be decided.</p> <p>6 Q Okay. Well, he says here that he talked</p> <p>7 to his chair, which is what you recommended that he</p> <p>8 do, and he does not see any high demand for additional</p> <p>9 courses at this time.</p> <p>10 Did you do any investigation, once you</p> <p>11 received this information, to determine whether or not</p> <p>12 this was actually something that was feasible or might</p> <p>13 happen?</p> <p>14 A The decision about offering courses and</p> <p>15 how many students it takes to run a class or what</p> <p>16 topics are offered is strictly under the academic</p> <p>17 affairs division under the provost through the deans</p> <p>18 so that is not a conversation that I would be involved</p> <p>19 in.</p> <p>20 Q Well, he's asking questions that would be</p> <p>21 really important in terms of evaluating what you're</p> <p>22 proposing and whether it's real, right?</p> <p>23 A And I had referred him to his dean and</p> <p>24 his chair.</p> <p>25 Q Right. And he told you that he went</p>

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<p>1 there and they said, "We don't know what you're</p> <p>2 talking about."</p> <p>3 My question is did you do anything, when</p> <p>4 you got that information, to investigate to see if</p> <p>5 there was actually anything to offer?</p> <p>6 A Again, I -- I wouldn't be able to answer</p> <p>7 those questions and that was why I had referred him to</p> <p>8 his dean.</p> <p>9 Q Okay. Well, if you look at page 4,</p> <p>10 you're the one who said "In light of your response</p> <p>11 that you are not able to accept our offer."</p> <p>12 A Yes.</p> <p>13 Q You were speaking on behalf of the</p> <p>14 university, right?</p> <p>15 A In this instance, yes.</p> <p>16 Q Okay. But you haven't told me what the</p> <p>17 offer was -- any tangible offer. You're saying maybe</p> <p>18 this would happen, but you don't seem to have any idea</p> <p>19 whether that was actually a possibility in real life.</p> <p>20 MS. LE: Objection to form.</p> <p>21 A And, again, beyond reiterating that he</p> <p>22 was offered to teach two online courses of a subject</p> <p>23 to be decided and they would run, you know, on a</p> <p>24 shorter semester basis, again, based on need in the</p> <p>25 department.</p>	<p>1 BY MS. McKINLEY:</p> <p>2 Q So did the psychology department identify</p> <p>3 a high demand need and offer those courses</p> <p>4 mid-semester?</p> <p>5 A After not -- you know, after him not</p> <p>6 accepting the offer, no.</p> <p>7 Q Okay. So whether -- so if there was a</p> <p>8 need, there was no course offered to meet it; is that</p> <p>9 right?</p> <p>10 A Sometimes need goes unmet, I guess.</p> <p>11 Q But you would have no actual idea whether</p> <p>12 there was a need or the psychology department would</p> <p>13 have offered any such course, right?</p> <p>14 A Again, ordinarily human resources would</p> <p>15 not be involved in academic planning and</p> <p>16 administration.</p> <p>17 Q Okay. And Dr. Oross didn't say, "I</p> <p>18 reject an offer," he asked you specifically, "What is</p> <p>19 the offer?"</p> <p>20 So I guess I'm wondering -- well, let me</p> <p>21 ask you this: After you received his email on August</p> <p>22 30th asking these questions about what is the offer,</p> <p>23 when will it be, how many students, you know, what are</p> <p>24 the topics, how much time am I going to have to get</p> <p>25 ready, did you talk to anyone and say, "Look, he's got</p>
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<p>1 some questions here that I think deserve an answer"?</p> <p>2 A It seemed clear to me from this, given</p> <p>3 the timing and the questions, the questions that I had</p> <p>4 already addressed in my conversation with him, that he</p> <p>5 was not interested in exploring this offer. I</p> <p>6 reviewed that with Mr. Pena who concurred and that was</p> <p>7 the reason for my response.</p> <p>8 Q Okay. So you disagree that what you put</p> <p>9 in your letter that you're calling an offer lacks the</p> <p>10 details needed to make a decision?</p> <p>11 A A decision ...</p> <p>12 Q Well, he says, "You haven't given me</p> <p>13 enough information for me to accept or reject your</p> <p>14 offer," and then you wrote back, after you talked to</p> <p>15 Pena, and said, "Okay, well, you didn't accept our</p> <p>16 offer so, you know, you're going to be on leave</p> <p>17 without pay."</p> <p>18 And my question is: Do you disagree that</p> <p>19 he did not accept or reject the offer and he was</p> <p>20 asking you for more information?</p> <p>21 A And, again, so much of what he was asking</p> <p>22 we had already discussed and those answers weren't</p> <p>23 available --</p> <p>24 Q Right.</p> <p>25 A -- in that moment.</p>	<p>1 Q Exactly. They weren't available. Did</p> <p>2 you give him any information between August 27th and</p> <p>3 when you wrote your letter on -- I'm sorry, the email</p> <p>4 on August 30th to answer any of the questions that he</p> <p>5 presented?</p> <p>6 A There was no new information.</p> <p>7 Q Right. Okay. And Pena didn't give you</p> <p>8 any new information, right?</p> <p>9 A No.</p> <p>10 Q And did you talk to Dr. Hawkinson about</p> <p>11 this?</p> <p>12 A No.</p> <p>13 Q None of the provosts?</p> <p>14 A Again, not in that moment.</p> <p>15 Q Or any moment, right?</p> <p>16 A I'm sorry?</p> <p>17 Q Or any moment; isn't that right?</p> <p>18 A Did I talk to the provost?</p> <p>19 Q Right. You said the provost was going to</p> <p>20 be involved in talking to someone about this so I'm</p> <p>21 asking you if you ever talked to the provost about it.</p> <p>22 A When?</p> <p>23 Q Between August 27th and August 30th.</p> <p>24 A I did not talk to the provost in that</p> <p>25 time.</p>

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1 Q Okay. So on page 7 Dr. Oross wrote to
2 you and asked you for any documentation outlining the
3 reason why his sabbatical request was denied.
4 Did you ever provide him with any
5 information, other than that letter saying it's -- Dr.
6 Hawkinson denied it?
7 A There was no other correspondence beyond
8 my email from August 27th. I communicated to him, you
9 know, verbally but no written.
10 Q You mentioned earlier something about the
11 emergency management team.
12 A Yes.
13 Q What is that?
14 A The emergency management team is a group
15 comprised of managers, faculty, staff and some
16 students that has been engaged in formulating the
17 university's COVID protocols.
18 Q And did that -- did any of the
19 conversations that took place in that group pertain to
20 requests for accommodation by faculty who needed
21 remote work accommodations?
22 A No.
23 Q Was there ever any discussion about the
24 CDC guidelines for IHEs with regard to that issue?
25 A About CDC protocols in regards to

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1 requests for remote work?
2 Q Yes.
3 A No.
4 Q Okay. Were you ever involved in a
5 conversation with Jesus Pena in which that issue was
6 discussed specifically?
7 A Remote work and CDC protocols, no.
8 Q How about EEOC guidelines and regulations
9 with regard to evaluating those kinds of accommodation
10 requests?
11 A Not specifically, no.
12 Q In relation to you -- I mean, you told me
13 he is your supervisor -- what is his role in terms of
14 making sure that you have the information that you
15 need to properly implement the ADA policy or the
16 reasonable accommodation policy?
17 A What is Jesus's role?
18 Q Right.
19 A He is -- he's my resource in a
20 consultative fashion.
21 Q Okay. So did he provide you with any
22 resources to address these kinds of requests, other
23 than what we've already discussed?
24 A Not beyond what we've already discussed,
25 no.

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1 Q Before you denied the accommodation
2 request, did you have a conversation with the interim
3 chair as to how they are going to cover Dr. Oross's
4 classes if his accommodation request was denied?
5 A With the interim chair, no.
6 Q How about the dean?
7 A About how courses would be covered, I
8 don't think so.
9 Q Do you have any idea what kind of -- did
10 you know what they were going to do if Dr. Oross was
11 not going to be able to teach his classes for the fall
12 semester?
13 A I had -- I did not discuss what their
14 specific coverage plans were. I know in a general
15 sense what their options are.
16 Q Okay. Did you know whether it was going
17 to be burdensome for the department to cover those
18 classes if Dr. Oross couldn't teach them?
19 A I did not discuss that with them, no.
20 Q So tell me about the sabbatical in
21 relation to the leave without pay as it pertains to
22 accrual of leave time. So if a person is on
23 sabbatical, would they be accruing, like, sick time,
24 vacation time, that sort of thing?
25 A The bargaining unit specifies what the

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1 accrual is during sabbatical. I don't remember off
2 the top of my head. Faculty do not have annual or
3 vacation time. They only accrue sick and personal.
4 Q Okay. So is there a difference between
5 the accrual of sick and personal time if you're on
6 sabbatical as opposed to if you're on leave without
7 pay?
8 A If you're on leave without pay, you
9 wouldn't be accruing them and I don't remember off the
10 top of my head what it is if you're on sabbatical.
11 Q Do you think that would be in the
12 contract?
13 A Yes, it is in the contract.
14 Q Okay. How about contributions to
15 retirement funds? Is there a distinction between
16 leave without pay and sabbatical in that regard?
17 A In the sense that sabbatical is paid and
18 so those contributions would be continuing versus
19 leave without pay and obviously those contributions
20 would not be counted in.
21 Q Now, under your policy, a leave without
22 pay is something that has to be requested in writing,
23 right?
24 A If it is a stand-alone policy -- I mean,
25 if it's a stand-alone request, yes. In this case, it

23 (Pages 86 to 89)

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<p>1 would -- it was tied to a contiguous FMLA related</p> <p>2 request which had already been approved.</p> <p>3 Q Well, but he didn't ask for FMLA or leave</p> <p>4 without pay for the fall semester, though, did he?</p> <p>5 A There was a serious health condition form</p> <p>6 that was -- excuse me, he submitted a serious health</p> <p>7 condition form to our office upon request of</p> <p>8 recertification of his FMLA health condition.</p> <p>9 Q When?</p> <p>10 A In early September.</p> <p>11 Q You're not suggesting, are you, that</p> <p>12 putting him on FMLA or a leave without pay was an</p> <p>13 accommodation, are you?</p> <p>14 A No, merely that the leave provisions are</p> <p>15 an alternative.</p> <p>16 MS. McKINLEY: Why don't we take a half</p> <p>17 hour lunch break and then we'll come back. What time</p> <p>18 is it now?</p> <p>19 MS. LE: It's 12:23.</p> <p>20 MS. McKINLEY: All right. Do you want to</p> <p>21 come back at 1:00?</p> <p>22 MS. LE: Sure.</p> <p>23 MS. McKINLEY: Okay, that sounds good.</p> <p>24 (Luncheon recess taken.)</p> <p>25 BY MS. McKINLEY:</p>	<p>1 Q Ms. Weidman, do you ever receive copies</p> <p>2 of the meet-and-discuss minutes?</p> <p>3 A I believe they're emailed out, but I</p> <p>4 don't typically review them.</p> <p>5 Q Okay. Do you remember in August Jason</p> <p>6 Lanter, the vice-president of the union, reaching out</p> <p>7 to you for data on how many faculty requested remote</p> <p>8 teaching accommodations for the fall?</p> <p>9 A I remember getting a request.</p> <p>10 Q You do or you don't? I couldn't hear</p> <p>11 you.</p> <p>12 A I'm sorry, I do remember the request.</p> <p>13 Q Did you respond to it?</p> <p>14 A I don't remember that I responded to</p> <p>15 that. I'm not sure. I don't remember specifically if</p> <p>16 someone else was going to respond.</p> <p>17 Q Did Jesus Pena talk to you about the</p> <p>18 discussion at the meet-and-discuss about this issue in</p> <p>19 August?</p> <p>20 A He may have mentioned it. I don't</p> <p>21 remember anything specific.</p> <p>22 Q Okay. Did he give you any instructions</p> <p>23 or any -- anything to follow up on with regard to the</p> <p>24 accommodation issues for people who needed -- or</p> <p>25 faculty, I'm sorry, who needed remote teaching</p>
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<p>1 accommodations?</p> <p>2 A Did Jesus give me any instructions to</p> <p>3 follow up?</p> <p>4 Q Right.</p> <p>5 A Nothing specific that I remember.</p> <p>6 Q So when you denied the accommodation</p> <p>7 request for Professor Oross, did you make any</p> <p>8 determination as to whether allowing him to teach</p> <p>9 online would have cost any money at all?</p> <p>10 A So you're asking --</p> <p>11 Q Would you have had to, you know, buy</p> <p>12 equipment? Was there anything at all in way of</p> <p>13 expenses that would have been associated with his</p> <p>14 request?</p> <p>15 A Faculty who teach better than 80 percent</p> <p>16 online receive a per student stipend, a per student</p> <p>17 amount that's in a separate payment.</p> <p>18 Q I'm sorry, I couldn't hear what you said.</p> <p>19 A I'm sorry, is it -- I keep forgetting I</p> <p>20 have to --</p> <p>21 Q That's okay.</p> <p>22 A I apologize.</p> <p>23 Q You know, sometimes with Zoom, you know,</p> <p>24 we don't hear sometimes as well as we hear ourselves</p> <p>25 so ...</p>	<p>1 A As far as additional expense that's</p> <p>2 associated with online teaching, there's a provision</p> <p>3 in the faculty bargaining agreement that allows for an</p> <p>4 extra per -- it's an extra amount per student for each</p> <p>5 class that's taught 80 percent or better online.</p> <p>6 Q Okay. In terms of an accommodation</p> <p>7 discussion -- well, that was never brought up, right?</p> <p>8 A Correct, that was not.</p> <p>9 Q Okay, it wasn't. It had nothing to do</p> <p>10 with the denial of the request, correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. Have you reviewed the complaint in</p> <p>13 this case?</p> <p>14 A Not in depth.</p> <p>15 Q Okay. And have you reviewed the answer?</p> <p>16 A Again, not in depth.</p> <p>17 Q I'm just looking through my notes.</p> <p>18 Actually, I covered more ground than I thought I had.</p> <p>19 I think we're up to October now.</p> <p>20 Okay. So, yeah, let's go to October.</p> <p>21 All right. Let's take a look at Exhibit 16.</p> <p>22 (SO Exhibit Number 16 produced and marked</p> <p>23 for identification.)</p> <p>24 BY MS. McKINLEY:</p> <p>25 Q Do you have that?</p>

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<p>1 A Yep, I'm just getting it here.</p> <p>2 MS. LE: I just want to ask. Lorrie, the</p> <p>3 exhibit starts on page 2 of something that may be with</p> <p>4 the letter. Was that intentional?</p> <p>5 MS. McKINLEY: Yeah, it's a two-page</p> <p>6 letter and I think it's the email transmittal, is the</p> <p>7 third page.</p> <p>8 MS. LE: Okay. I only have -- what you</p> <p>9 sent me is only two pages.</p> <p>10 MS. McKINLEY: Oh, you know why, because</p> <p>11 mine is only two also -- no, it is. It's three. I</p> <p>12 have an email in the back. Which page don't you have?</p> <p>13 MS. LE: I don't have page 1 of the</p> <p>14 letter. I have page 2 of the letter and then the</p> <p>15 email, but not page 1 of the letter.</p> <p>16 MS. McKINLEY: All right. That's weird.</p> <p>17 All right. Let me go get that. I'm going to go up</p> <p>18 front because I don't want to mess up the Zoom.</p> <p>19 MS. LE: Yeah.</p> <p>20 (Discussion held off the record.)</p> <p>21 BY MS. McKINLEY:</p> <p>22 Q So let me go back to August for a minute.</p> <p>23 So after the accomodation was denied for Dr. Oross,</p> <p>24 were you aware of the publicity concerning his</p> <p>25 situation?</p>	<p>1 A Yes, I was.</p> <p>2 Q Okay. And how did you become aware of</p> <p>3 that?</p> <p>4 A It was publicized by email. I had other</p> <p>5 people who saw it who said, "Hey, did you see this?"</p> <p>6 Q See what, an email or something else?</p> <p>7 A No, the articles themselves.</p> <p>8 Q Okay. So there's an article in The</p> <p>9 Inquirer on August 24th.</p> <p>10 A Yes.</p> <p>11 Q And you saw that?</p> <p>12 A Um-hum.</p> <p>13 Q Okay. And did you see any of the</p> <p>14 articles that followed that?</p> <p>15 A I think I saw all of them.</p> <p>16 Q And did you discuss any of them with</p> <p>17 anyone in your office?</p> <p>18 A Beyond our just normal discussion of, you</p> <p>19 know, this is in the news; this is something to be</p> <p>20 aware of.</p> <p>21 Q What did you think about it?</p> <p>22 A I mean, anytime -- anytime the university</p> <p>23 appears in a less than favorable way, you know, it's</p> <p>24 not something we're all happy about.</p> <p>25 Q Did you understand why he was upset?</p>
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<p>1 A Absolutely.</p> <p>2 Q Did you talk with Jesus Pena about it?</p> <p>3 A I'm sure we did.</p> <p>4 Q Okay. So tell me about those</p> <p>5 conversations.</p> <p>6 A Again, beyond, you know, discussing the</p> <p>7 event, this is in the news, you know, we didn't have</p> <p>8 any discussion about anything else that should happen</p> <p>9 or be done about this. It is what it is.</p> <p>10 Q Did you talk to Dr. Hawkinson?</p> <p>11 A I don't remember that I specifically had</p> <p>12 any conversation with him about it.</p> <p>13 Q Do you know if Jesus talked to Dr.</p> <p>14 Hawkinson about it?</p> <p>15 A I don't know that.</p> <p>16 Q Okay. So let's --</p> <p>17 MS. McKINLEY: Did you get it, Kathy?</p> <p>18 MS. LE: I did and I forwarded it to</p> <p>19 Jennifer.</p> <p>20 MS. McKINLEY: Okay. All right. Yeah,</p> <p>21 I'm sorry, it just, I guess, mis-scanned.</p> <p>22 MS. LE: It happens to the best of us.</p> <p>23 MS. McKINLEY: Well, I'm not one of those</p> <p>24 so ...</p> <p>25 A Okay. I see it.</p>	<p>1 BY MS. McKINLEY:</p> <p>2 Q Do you have it?</p> <p>3 A Um-hum. Yes.</p> <p>4 Q So this is a letter to Morris Scott who's</p> <p>5 at the Disciplinary Rights Project -- or I'm sorry.</p> <p>6 They keep changing their name. Disability Rights of</p> <p>7 Pennsylvania dated October 14th to Mr. Scott who is a</p> <p>8 lawyer there, I guess, and it's about Dr. Oross.</p> <p>9 And among other things it says that "the</p> <p>10 university would be more than happy to engage with you</p> <p>11 in discussions regarding Dr. Oross's request for</p> <p>12 accommodation."</p> <p>13 That would mean you and your office,</p> <p>14 correct?</p> <p>15 MS. LE: Objection to form.</p> <p>16 BY MS. McKINLEY:</p> <p>17 Q Well, who else would he have a discussion</p> <p>18 with regarding the interactive process?</p> <p>19 I'm sorry, let me back up. So did you</p> <p>20 know about this letter?</p> <p>21 A No, I did not.</p> <p>22 Q Jesus Pena didn't tell you about it?</p> <p>23 A I believe I was aware that there was some</p> <p>24 sort of an inquiry from a disability rights group. I</p> <p>25 was not privy to any of the specifics and I have not</p>

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<p>1 seen this letter before.</p> <p>2 Q Okay. Well, if the university would be</p> <p>3 engaging in a request for -- or an interactive process</p> <p>4 of some kind, wouldn't your office have to be</p> <p>5 involved?</p> <p>6 A Typically.</p> <p>7 Q So when was the first time that you were</p> <p>8 aware that the PASSHE lawyer had offered to engage in</p> <p>9 an interactive process with Dr. Oross?</p> <p>10 A That Mr. Ferguson had offered to engage</p> <p>11 in the interactive process with Dr. Oross?</p> <p>12 Q Well, what he said was -- yeah. Well,</p> <p>13 let's start with the first sentence.</p> <p>14 A That "the university would be more than</p> <p>15 happy to engage with you" -- Disability Rights of PA</p> <p>16 -- "in discussions regarding Dr. Oross and his request</p> <p>17 for accommodation."</p> <p>18 Q Okay. But that was conditioned on him</p> <p>19 not continuing to publicize his case or talk about it</p> <p>20 in public; isn't that right?</p> <p>21 A Again, this is the first time I'm seeing</p> <p>22 this. So, yes, that's what I read.</p> <p>23 Q You've never seen this letter in your</p> <p>24 life until today?</p> <p>25 A I have not.</p>	<p>1 Q Well, would you agree with me that Dr.</p> <p>2 Oross had a right to object to the way his</p> <p>3 accommodation request was handled?</p> <p>4 A I don't dispute that it was his right to</p> <p>5 express his displeasure however -- however he chose,</p> <p>6 or his disagreement.</p> <p>7 Q And based on your experience in your</p> <p>8 current position, would you agree with me that it's</p> <p>9 not okay for an employer to retaliate against someone</p> <p>10 who is opposing something that they consider to be an</p> <p>11 unlawful act under the ADA or the Rehabilitation Act?</p> <p>12 A I agree that retaliation is not -- is not</p> <p>13 permitted.</p> <p>14 Q And would you also agree that the</p> <p>15 interactive process is something that a person is</p> <p>16 entitled to if they request an accommodation, not</p> <p>17 something that can be conditioned on giving up some</p> <p>18 other rights, such as the right to free speech?</p> <p>19 A I do.</p> <p>20 (SO Exhibit Number 17 produced and marked</p> <p>21 for identification.)</p> <p>22 BY MS. McKINLEY:</p> <p>23 Q So take a look at the next exhibit and</p> <p>24 maybe -- and just tell me whether you ever saw the</p> <p>25 actual letter from Disciplinary Rights of PA that Mr.</p>
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<p>1 Ferguson was responding to.</p> <p>2 A Is this Exhibit 17?</p> <p>3 Q It is, yes.</p> <p>4 A I have not seen this.</p> <p>5 Q Well, did anyone ever tell you that Dr.</p> <p>6 Oross or anyone on his behalf had contacted the</p> <p>7 university and asked for accommodations for the</p> <p>8 spring?</p> <p>9 MS. LE: Objection to form.</p> <p>10 A Did anyone ever tell me that Dr. Oross</p> <p>11 had requested accommodations for spring?</p> <p>12 BY MS. McKINLEY:</p> <p>13 Q Right.</p> <p>14 A Via this other letter?</p> <p>15 Q Yeah, I'm sorry. Let me rephrase it just</p> <p>16 so it's not confusing.</p> <p>17 Okay. Yes, I'm looking at page 5 under</p> <p>18 "Requested Relief," and it says "Dr. Oross seeks</p> <p>19 assurance from Kutztown University that it will allow</p> <p>20 him to teach a full course load and conduct office</p> <p>21 hours both remotely if needed in the spring of 2022</p> <p>22 per the medical advice of Dr. Oross's physicians."</p> <p>23 Were you advised by Jesus Pena that such</p> <p>24 a request had been made on Dr. Oross's behalf?</p> <p>25 A No, I did not know about this letter.</p>	<p>1 Q Okay.</p> <p>2 (SO Exhibit Number 18 produced and marked</p> <p>3 for identification.)</p> <p>4 BY MS. McKINLEY:</p> <p>5 Q So take a look at Exhibit 18.</p> <p>6 A Okay.</p> <p>7 Q Do you have that?</p> <p>8 A Yes.</p> <p>9 Q Okay. Now, this is a transmittal email</p> <p>10 from you, I guess, on October 13th and then there's a</p> <p>11 letter and then a couple of attachments.</p> <p>12 A Um-hum.</p> <p>13 Q And this was the day before the letter</p> <p>14 from Mr. Ferguson to Mr. Scott. So you indicate in</p> <p>15 this letter that -- you're talking about the winter</p> <p>16 semester and you knew that he was scheduled to teach</p> <p>17 online, right?</p> <p>18 A Um-hum, yes.</p> <p>19 Q And you had absolutely no reason to</p> <p>20 believe that he would not be able to perform the</p> <p>21 duties of teaching his online course, right?</p> <p>22 A Correct.</p> <p>23 Q Okay. And you knew that he was scheduled</p> <p>24 to teach two online classes in the spring, correct?</p> <p>25 A Correct.</p>

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<p>1 Q And you didn't have any reason to think</p> <p>2 that he would not be able to fully perform the</p> <p>3 functions of that position, right?</p> <p>4 A Correct.</p> <p>5 Q Okay. But you said "He will not be able</p> <p>6 to teach those classes" -- meaning the online</p> <p>7 classes -- "without a full-time full duty release</p> <p>8 prior to the start of any classes."</p> <p>9 So what prompted you to write to Dr.</p> <p>10 Oross on October 13th to say you're not allowed to</p> <p>11 come back and teach even your online classes unless</p> <p>12 you can do "full-time full duty," in quotes?</p> <p>13 A So this letter began to be developed as</p> <p>14 part of our FMLA process.</p> <p>15 Q I can't hear you. I'm sorry.</p> <p>16 A I'm sorry.</p> <p>17 Q That's okay. That's fine. I just want</p> <p>18 to tell you when I don't hear you.</p> <p>19 A Yeah, absolutely.</p> <p>20 So this letter was developed as a result</p> <p>21 of our FMLA leave of absence process. So in</p> <p>22 September, Dr. Oross submitted his updated serious</p> <p>23 health condition form as requested, which, you know,</p> <p>24 documented the nature of his medical need that he was</p> <p>25 immune-suppressed and couldn't be in the classroom but</p>	<p>1 could otherwise teach online.</p> <p>2 And in the process -- in the course of</p> <p>3 processing that request into our HR system, our leave</p> <p>4 administrator was looking forward to what sort of</p> <p>5 communication she needed to send on a routine basis</p> <p>6 and she -- so she would have been sending this out as</p> <p>7 part of a -- the normal process.</p> <p>8 And in confirming with the system office,</p> <p>9 the Pennsylvania State System benefit staff in</p> <p>10 Harrisburg, that -- her understanding of what the</p> <p>11 timeline was as far as how long his benefits would</p> <p>12 continue without pay and when he would run out of</p> <p>13 benefits entitlement and so forth, she asked to</p> <p>14 confirm that with them.</p> <p>15 And they came back and said, no, that our</p> <p>16 understanding was not correct and that his benefits</p> <p>17 would in fact end -- his entitlement to benefits on</p> <p>18 leave without pay would end December 29th, as</p> <p>19 indicated in the letter.</p> <p>20 And so when she brought that to me, we</p> <p>21 started having that conversation. I saw that he was</p> <p>22 scheduled to teach on an online winter class and so I</p> <p>23 wanted to raise that with the benefit staff as well.</p> <p>24 So the way the processing works, he had a</p> <p>25 12-week entitlement to FMLA, during which he used his</p>
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<p>1 paid sick leave in the spring semester, and he could</p> <p>2 continue after that 12 weeks to use his paid leave, up</p> <p>3 to the extent allowed by law, so that was the 17 days</p> <p>4 that he used in the fall.</p> <p>5 After that point, he moved into a leave</p> <p>6 without pay -- an extended leave without pay status</p> <p>7 with benefits, which can continue -- I think it's</p> <p>8 another 12 weeks until -- until December 29th, after</p> <p>9 which then he would be entitled to -- I think it's</p> <p>10 till June -- another so many weeks. And then these</p> <p>11 are all -- these are timelines that we confirm with</p> <p>12 the benefit staff because they are relatively complex.</p> <p>13 So we had started having that</p> <p>14 conversation with them back in September when he had</p> <p>15 submitted his form and we had several back and forths</p> <p>16 with them because they said, no, he couldn't teach in</p> <p>17 winter because that would be -- that would constitute</p> <p>18 a part-time return to work and at the stage where he</p> <p>19 was at with the -- in the leave without pay status,</p> <p>20 that at that point all that would be allowed would be</p> <p>21 a full-time return to work. There was no provision</p> <p>22 for an intermittent or partial return.</p> <p>23 And it took us a little longer to work</p> <p>24 through and develop the letter because I, you know,</p> <p>25 reached out to confirm that that was in fact the</p>	<p>1 understanding and then the correct interpretation of</p> <p>2 the benefits provisions.</p> <p>3 Q All right. So you've given me a lot of</p> <p>4 information, and I haven't really written much of it</p> <p>5 down, so let me see how I do with this.</p> <p>6 So who -- what are the names of the</p> <p>7 people that you consulted with?</p> <p>8 A Okay. Debora Longenhagen, who signed the</p> <p>9 form that's attached to that letter, is our leave</p> <p>10 administrator. She is the one that has been -- had</p> <p>11 been corresponding with Dr. Oross previous to that</p> <p>12 during his spring absence.</p> <p>13 Q Who else?</p> <p>14 A The system benefit staff at the</p> <p>15 Pennsylvania State System Office. So Linda Harrison</p> <p>16 and Agnes Peiffer.</p> <p>17 Q I'm sorry, what? Piper?</p> <p>18 A Peiffer.</p> <p>19 Q P-i-f-e-r?</p> <p>20 A I want to say P-e-i-f-f-e-r, I think.</p> <p>21 Q And what was the first name?</p> <p>22 A Agnes.</p> <p>23 Q And who is she?</p> <p>24 A She works with the benefit staff.</p> <p>25 Q And this is at PASSHE?</p>

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<p>1 A This is at PASSHE, yes.</p> <p>2 Q Anyone else?</p> <p>3 A Brenda Mundell who is in the system</p> <p>4 office in the HR benefits side.</p> <p>5 Q Did you say Mandel or Mondale?</p> <p>6 A Mundell, M-u-n-d-e-l-l. And I also</p> <p>7 consulted with system labor relations staff to confirm</p> <p>8 our understanding.</p> <p>9 Q Labor relations where?</p> <p>10 A At PASSHE.</p> <p>11 Q Who is that person?</p> <p>12 A I confirmed that with Melissa Mullen,</p> <p>13 M-u-l-l-e-n.</p> <p>14 Q Did you consult with Jesus Pena about</p> <p>15 this situation before you sent out the letter?</p> <p>16 A Beyond letting him know that this is what</p> <p>17 was going to be happening, no. The system benefit</p> <p>18 rules are independent of our interpretation, in other</p> <p>19 words.</p> <p>20 Q All right. Well, isn't it true that if</p> <p>21 Dr. Oross had received the accommodation he requested</p> <p>22 in the fall, we wouldn't be at this point with regard</p> <p>23 to the benefits?</p> <p>24 A That's true.</p> <p>25 Q Okay. Now, you mentioned FMLA. And I'm</p>	<p>1 looking at the FMLA designation notice that's attached</p> <p>2 and the date I see on it is January 19th, 2021. And</p> <p>3 you were mentioning something about September and I</p> <p>4 don't see that here. Am I missing something?</p> <p>5 A So this is page 4 in Exhibit 18.</p> <p>6 Q Well, the date is on the next page where</p> <p>7 it says Debora Longenhagen signed it on the 19th of</p> <p>8 January 2021.</p> <p>9 A Yes, and so this is -- this is the</p> <p>10 original form because that was when his FMLA</p> <p>11 progression began.</p> <p>12 Q Okay. So Dr. Oross did not ask for a</p> <p>13 leave without pay for the spring semester, did he?</p> <p>14 MS. LE: Objection.</p> <p>15 A For which spring semester?</p> <p>16 BY MS. McKINLEY:</p> <p>17 Q Well, you say here -- on the second</p> <p>18 sentence of the second paragraph, it says "Extended</p> <p>19 leave without pay is approved from 9/23/21 to</p> <p>20 6/23/22," which would take him through that spring</p> <p>21 semester, correct?</p> <p>22 A That's correct.</p> <p>23 Q Okay. But he didn't ask for a leave</p> <p>24 without pay for the spring semester, did he?</p> <p>25 A So, no, but he would have to provide a</p>
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<p>1 release to return to work full duty in order to be</p> <p>2 able to return.</p> <p>3 Q Well, what do you mean by "full duty"?</p> <p>4 A Full duty is interpreted for him to mean</p> <p>5 teaching in the classroom.</p> <p>6 Q Where do you see that?</p> <p>7 A That's not listed in here.</p> <p>8 Q Right. It's not listed anywhere, is it?</p> <p>9 A That is my understanding of full duty.</p> <p>10 Q Okay. But where did you see it?</p> <p>11 A I didn't see it written there anywhere.</p> <p>12 Q Right. It's not in the contract, right?</p> <p>13 A It's not specified in the contract, no.</p> <p>14 Q Would you agree with me that the duties</p> <p>15 of a tenured professor -- and maybe some other people,</p> <p>16 too, but let's just talk about those people right now.</p> <p>17 The essential functions of that position are</p> <p>18 identified in the contract?</p> <p>19 A I would -- I would say that the essential</p> <p>20 functions of a faculty member at Kutztown University</p> <p>21 include in-the-classroom teaching unless they were</p> <p>22 specifically hired to teach online.</p> <p>23 Q Is there a job description that you're</p> <p>24 aware of that would apply to an associate professor at</p> <p>25 Kutztown that says essential functions means teaching</p>	<p>1 in the classroom?</p> <p>2 A I do not know if that exists.</p> <p>3 Q Because there are other professors --</p> <p>4 tenured professors who teach online, right?</p> <p>5 A There are other tenured professors who</p> <p>6 teach online. I don't know if there are any that</p> <p>7 teach exclusively online.</p> <p>8 Q You don't know?</p> <p>9 A I can't say if there are or there are</p> <p>10 not. I'm not familiar enough with faculty schedules.</p> <p>11 Q Well, if there are people that teach</p> <p>12 exclusively online, it would be difficult, wouldn't</p> <p>13 it, to say that full duty for Dr. Oross means he has</p> <p>14 to be in a classroom?</p> <p>15 MS. LE: Objection to form.</p> <p>16 A I believe that would depend on the</p> <p>17 program involved.</p> <p>18 BY MS. McKINLEY:</p> <p>19 Q Okay. What I'm trying to figure out is</p> <p>20 where on earth did you find this definition of full</p> <p>21 duty that you're referring to in this letter?</p> <p>22 A That came from the system benefits staff.</p> <p>23 Q Where?</p> <p>24 A I'm sorry, are you asking about the --</p> <p>25 where the language came from or the definition --</p>

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<p>1 Q Yes.</p> <p>2 A -- that we used?</p> <p>3 Q Well, you're using the language full duty</p> <p>4 so I guess I was defining it -- you know, I was</p> <p>5 clumping it together maybe. And if they're separate,</p> <p>6 you can tell me that, but I want to know where it came</p> <p>7 from.</p> <p>8 A That came from the system benefit staff.</p> <p>9 Q All right. So are they -- the people</p> <p>10 that are administering FMLA at the PASSHE level?</p> <p>11 A Yes.</p> <p>12 Q Okay. So the fact that someone runs out</p> <p>13 of FMLA time doesn't mean that we're not still talking</p> <p>14 about the ADA and whether they can come back to work</p> <p>15 with a reasonable accommodation, right?</p> <p>16 A I'm sorry, I didn't hear all that.</p> <p>17 Q I said the fact that someone runs out of</p> <p>18 FMLA time doesn't mean that we're moving towards, you</p> <p>19 know, pushing them out of -- well, let me rephrase it.</p> <p>20 The termination of FMLA -- the expiration</p> <p>21 of FMLA doesn't mean we're not talking about</p> <p>22 accommodations at that point, correct?</p> <p>23 A So in other words, the end of their FMLA</p> <p>24 entitlement does not negate ADA?</p> <p>25 Q Correct.</p>	<p>1 A I agree with that.</p> <p>2 Q Yeah. In fact, isn't that what it says</p> <p>3 on page 10 at the bottom, where it says "Return to</p> <p>4 Work Rights" and it talks about -- it talks about</p> <p>5 returning to the same position, FLMA, and then I think</p> <p>6 it's in that section where it -- it talks about</p> <p>7 vacancies and so forth.</p> <p>8 But you would agree with me, right, that</p> <p>9 the -- when someone is requesting accommodation at the</p> <p>10 end of FMLA, that is something that requires an</p> <p>11 interactive process, right?</p> <p>12 A Yes.</p> <p>13 Q You can't just, like, tell them you're</p> <p>14 out of time and, you know, we're at the end of this --</p> <p>15 on this specific date you're done? That's not how it</p> <p>16 works, is it?</p> <p>17 MS. LE: Objection to form.</p> <p>18 A So when ADA enters into it, that is</p> <p>19 correct.</p> <p>20 BY MS. McKINLEY:</p> <p>21 Q Yeah. And you knew that Dr. Oross wanted</p> <p>22 to come back to work, right?</p> <p>23 A Um-hum, yes.</p> <p>24 Q I mean, in addition to the newspaper</p> <p>25 articles, he had talked on campus at a rally. You</p>
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<p>1 knew about that, right?</p> <p>2 A Yes.</p> <p>3 Q And that was in the paper. He had sent</p> <p>4 emails to the entire faculty, some of which were</p> <p>5 copied to you, correct?</p> <p>6 A Yes.</p> <p>7 Q And would you agree with me that one of</p> <p>8 the types of accommodations, you know, in a case like</p> <p>9 this that would have to be considered, if necessary,</p> <p>10 is not only whether he can have a remote accommodation</p> <p>11 but a part-time work -- or a modified work schedule?</p> <p>12 A Correct, a modified work schedule could</p> <p>13 be considered as an ADA accommodation.</p> <p>14 Q Right. Exactly. And if someone is on a</p> <p>15 modified work schedule for purposes of reasonable</p> <p>16 accommodation, that would not lead to the kind of</p> <p>17 letter that you're -- that you sent him on October</p> <p>18 13th, right?</p> <p>19 A I'm sorry, I --</p> <p>20 Q Well, if he's receiving a modified work</p> <p>21 accommodation, we're not going to say to him, like, at</p> <p>22 the end of the specific period of time that would</p> <p>23 apply for FMLA that, you know, all of the things you</p> <p>24 talk about in this letter are going to happen, that</p> <p>25 your benefits are going to get cut off and all those</p>	<p>1 things?</p> <p>2 MS. LE: Objection to form.</p> <p>3 A So are you talking about, like, if he</p> <p>4 would be getting a modified accommodation in the</p> <p>5 spring?</p> <p>6 BY MS. McKINLEY:</p> <p>7 Q Right.</p> <p>8 A Which would have happened after the date</p> <p>9 of the letter, after --</p> <p>10 Q Right.</p> <p>11 A -- December 29th.</p> <p>12 Q But you knew -- but my first question</p> <p>13 was, and I think you said yes, is that you knew he</p> <p>14 wanted an accommodation for the spring. One type of</p> <p>15 accommodation that could be considered is a remote</p> <p>16 work accommodation that you knew he wanted, right?</p> <p>17 A So I was not aware of the letter from the</p> <p>18 Pennsylvania Disability Rights Organization that</p> <p>19 stated his desire for the spring accommodation. So at</p> <p>20 the --</p> <p>21 Q Well, you knew from reading -- oh, I'm</p> <p>22 sorry. I didn't mean to cut you off.</p> <p>23 A So at the time of sending this out -- how</p> <p>24 do I do this? So at the time that I sent this letter</p> <p>25 out, we weren't even looking forward to the spring</p>

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<p>1 because we were still working through this period in 2 the fall and having just had the conversation about 3 whether or not he could teach during the winter. 4 Q Well, it says "We received information 5 that you're scheduled to teach online classes for the 6 spring. You will not be able to teach these classes 7 without a full-time full duty release for the spring." 8 So I'm not understanding why you're 9 saying you're not talking about the spring. 10 A Okay. I'm sorry, I -- I misunderstood 11 the question. So the reason for that language in 12 there, that language refers strictly to the -- 13 strictly to him outside of the intersection between 14 ADA and FMLA. So I'm looking at it strictly from an 15 FMLA perspective. 16 At the point that he was at in his 17 progression, a part-time return or an intermittent 18 return would not be permitted. He had to return on a 19 full-time basis. So that was exclusive of any ADA 20 accommodation that might be developed. 21 Q So are you telling me that at no time 22 before or after you sent this letter did Jesus Pena 23 ever tell you Dr. Oross wants an accommodation for the 24 spring? 25 A No. I think it was understood that his</p>	<p>1 desire for a full-time online schedule remained the 2 same. 3 Q Right. And you knew that he was already 4 scheduled to teach two classes online? 5 A Correct. 6 Q Right. And so did anyone ever call him 7 up and say, you know, let's talk about a modified work 8 schedule before we go down this path? 9 A Not someone from my office, no. 10 Q Well, you knew he was pretty upset about 11 receiving this letter, didn't you? 12 A Yes, I did. 13 Q Because he told you himself, right? 14 A Yep. 15 Q So having received those communications, 16 did you do anything to say, "Oh, I'm sorry, let's talk 17 about the ADA. Forget about the FMLA letter I just 18 sent you"? 19 A Well, the ADA for spring would not negate 20 the FMLA from fall. 21 Q Well, are you suggesting that an 22 accommodation would not have stopped the clock on this 23 FMLA expiration -- well, regardless of whether the 24 FMLA was still in effect or not, but it wouldn't have 25 pushed him into a situation where his benefits are</p>
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<p>1 being terminated and he's being threatened with 2 termination from his job? 3 MS. LE: Objection to form. 4 A I can't -- 5 BY MS. McKINLEY: 6 Q I mean, are you really saying that? 7 A I can't speak to what if because anything 8 that we would have received I would have had to -- I 9 would have had to confirm with system benefits to see 10 how those two different things intersect, and labor 11 relations probably, because of the way they do 12 intersect. 13 Q Well, there's no doubt in your mind, was 14 there, that he thought there was a connection between 15 those things? You're saying your FMLA is stopping, 16 you need a full-time full duty release to come and 17 even teach your online classes, and your medical 18 benefits are terminated on the 29th if you don't come 19 back to work with a full duty release, right? 20 MS. LE: Objection. You can answer. 21 A Oh, I'm sorry. So those -- this letter 22 relates to these benefit things that are happening 23 related to his leave from the spring. So this is not 24 any kind of -- this is not any kind of retaliation. 25 This is simply a timeline.</p>	<p>1 BY MS. McKINLEY: 2 Q Well, you're aware that he thought those 3 things were connected, right? He was really clear 4 about it, wasn't he? 5 MS. LE: Objection to form. 6 A Again, what he thought I can't control. 7 BY MS. McKINLEY: 8 Q Well, I'm not asking you what he thought 9 -- or maybe I did. I'm sorry. I can rephrase it, but 10 he told you that "I was released to full duty work, 11 what do you mean?" 12 A And, again, our interpretation of full 13 duty includes in-the-classroom teaching. That is an 14 essential function of the faculty. 15 Q Well, I heard that. 16 (SO Exhibit Number 20 produced and marked 17 for identification.) 18 BY MS. McKINLEY: 19 Q Let's look at Exhibit 20. 20 A Do I have that? 21 Q I don't know if you do or not. 22 MS. LE: It would be in the first email I 23 sent you. 24 BY MS. McKINLEY: 25 Q Okay. So he is specifically asking you</p>

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<p>1 "What do you mean full-time, full duty? I've been</p> <p>2 approved to teach my online classes, at the very</p> <p>3 least, for the winter and the spring," right?</p> <p>4 A Yes, I read that.</p> <p>5 Q And so he asked you specifically "What is</p> <p>6 full-time, full duty? What do you mean by that,"</p> <p>7 right?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 A I'm sorry, the email seems to be -- I</p> <p>11 don't know if it's out of order or --</p> <p>12 Q Well, it's an email string so there's</p> <p>13 probably a couple things that are repeated just</p> <p>14 because it was hard to sort of separate them out.</p> <p>15 A Um-hum.</p> <p>16 Q So the first page is -- you know, the</p> <p>17 first thing on top of -- the October 25th email from</p> <p>18 Dr. Oross would be -- yeah, that's what this is. He</p> <p>19 has some, I think, language that he quoted from you in</p> <p>20 a previous email, which I believe is -- well, he sent</p> <p>21 you an email on October 21st, right, and said "As</p> <p>22 you're fully aware, I was medically cleared to return</p> <p>23 to work full-time, full duty."</p> <p>24 Did you respond to that?</p> <p>25 A So I responded to -- I'm having trouble</p>	<p>1 following here on these emails. So I responded, it</p> <p>2 looks like, October -- October 27th when I answered</p> <p>3 that "teaching in person in the classroom is</p> <p>4 considered an essential function of the faculty</p> <p>5 position, a return to full duty would include a</p> <p>6 release to teach in person in the classroom."</p> <p>7 Q Okay. Again, where did you get that</p> <p>8 information?</p> <p>9 A We confirmed that understanding with</p> <p>10 system legal counsel, with university legal counsel.</p> <p>11 Q Why did it take you six days to get back</p> <p>12 to him?</p> <p>13 A Again, I had to confirm my understanding</p> <p>14 of that definition with legal counsel.</p> <p>15 Q You're aware that not only Dr. Oross was</p> <p>16 objecting to the use of that term in relation to the</p> <p>17 essential functions of his job, but you, Hawkinson and</p> <p>18 Pena were getting, for lack of a better word, pushback</p> <p>19 from other members of the faculty too, right?</p> <p>20 MS. LE: Objection to form.</p> <p>21 A I don't know what emails other people</p> <p>22 were getting.</p> <p>23 BY MS. McKINLEY:</p> <p>24 Q All right. Well, let's just look at one</p> <p>25 of them, because I didn't put them all in here, but if</p>
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<p>1 you look at page 5 of the document that you're on, at</p> <p>2 the bottom -- actually, that's the wrong page.</p> <p>3 Oh, I'm sorry. Page 7.</p> <p>4 A Okay.</p> <p>5 Q Okay. So you see here an email from</p> <p>6 Glenn Richardson. "I have searched our CBA for any</p> <p>7 reference to 'full duty' and I can find none."</p> <p>8 And then he goes on to say that he</p> <p>9 doesn't -- I'm sorry. "I see none of the enumerated</p> <p>10 duties of faculty provided by Article 4 and by</p> <p>11 extension Article 12.1 as incompatible with a fully</p> <p>12 online teaching load."</p> <p>13 You received that, didn't you?</p> <p>14 A Yes.</p> <p>15 Q And that wasn't the first time Glenn</p> <p>16 Richardson had expressed his concern about the way the</p> <p>17 accommodation issues for faculty who needed them for</p> <p>18 purposes of immune-compromise and immune-suppression</p> <p>19 and similar conditions during this academic year?</p> <p>20 MS. LE: Objection to form.</p> <p>21 A I'm sorry, was your question --</p> <p>22 BY MS. McKINLEY:</p> <p>23 Q I'm sorry. Yeah, let me just restate it</p> <p>24 again. This wasn't the first time you had heard from</p> <p>25 Glenn Richardson about this issue, right?</p>	<p>1 A I don't believe it was, correct.</p> <p>2 Q He had been very vocal about his concern</p> <p>3 about what was going on, right?</p> <p>4 A I believe I read emails from him before.</p> <p>5 Q In fact, the faculty, in general, is very</p> <p>6 supportive of Dr. Oross and the other faculty members</p> <p>7 who are in his position, right?</p> <p>8 MS. LE: Objection to form.</p> <p>9 A Again, there are over 400 faculty and I</p> <p>10 couldn't say who did or didn't support him.</p> <p>11 BY MS. McKINLEY:</p> <p>12 Q You were copied on some of those emails,</p> <p>13 right?</p> <p>14 A Correct.</p> <p>15 Q Okay. So in light of the fact that there</p> <p>16 was faculty concern being expressed, did you and Jesus</p> <p>17 Pena talk about the situation and try to come up with</p> <p>18 some sort of compromise?</p> <p>19 A I would say that being in human resources</p> <p>20 means that -- being on the side of making unpopular or</p> <p>21 unpleasant decisions isn't unusual. So the fact that</p> <p>22 this was not a popular decision or the fact that this</p> <p>23 was not -- that people objected to this decision</p> <p>24 doesn't necessarily mean that it was wrong.</p> <p>25 Q Well, Dr. Hawkinson made it clear to you</p>

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<p>1 and to Pena that he wasn't going to allow those kinds 2 of accommodations, right? 3 MS. LE: Objection to form. 4 A So the decision about the interpretation 5 of converting in-person classes to online was not made 6 at his direction. 7 BY MS. McKINLEY: 8 Q Well, he's made multiple public 9 statements on the issue, hasn't he? 10 MS. LE: Objection to form. 11 A I mean -- I'm not sure to what you're 12 referring. 13 BY MS. McKINLEY: 14 Q Have you ever heard Dr. Hawkinson state 15 in public that he is not going to allow accommodations 16 for people such as Dr. Oross who are asking for remote 17 work accommodations? 18 A I don't know that I ever have heard him 19 make that statement. 20 Q Well, in January he issued an update. Do 21 you remember reading it? It says -- let me just -- he 22 talks about "as to ongoing questions and concerns 23 about appropriate accommodations for employees during 24 the pandemic, KU remains committed to serving the 25 needs of our students," and then he talks about the --</p>	<p>1 you know, the emergency order. 2 And he said "200 faculty requests for 3 accommodation happened last year." That's not true, 4 is it? 5 A That would have been the flexible work 6 arrangement. 7 Q Right. And you heard him talk about "if 8 I have to accommodate one person, I have to 9 accommodate a whole lot of people," right? 10 A I don't know that I ever heard him make 11 that statement. 12 Q Well, that isn't a legitimate basis for 13 denying an accommodation, is it? 14 A No, that's correct. 15 Q So other than the -- do you know that you 16 sent on -- I can't actually remember if I asked this 17 specifically but -- actually, it's page 7a of this 18 exhibit. 19 MS. LE: Jennifer, it's page 8 of the 20 actual file. 21 MS. McKINLEY: Yeah, I'm sorry. I missed 22 a page. It was Friday night and -- 23 MS. LE: No problem. 24 MS. McKINLEY: -- I made it 7a. I'm 25 really sorry. I hope you'll forgive me.</p>
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<p>1 A Understood. Okay. Oh, I see at the 2 bottom where you have 7a. Okay. So what was the 3 question? I'm sorry. 4 BY MS. McKINLEY: 5 Q My question was other than that statement 6 that you made -- "teaching in person in the classroom 7 is considered an essential function of your faculty 8 position" -- did you ever respond to him in any other 9 way in response to his emails regarding "What do you 10 mean by full duty"? 11 A That was my only response to him. I 12 mean, that answered the question. 13 Q Okay. Well, did you ask anyone at -- I 14 think you said at -- is it PASSHE or PASSHA? 15 A PASSHE. 16 Q That's how you pronounce it, PASSHE? 17 A PASSHE, yes. 18 Q Okay. Did you ask them to provide 19 anything in writing because people are asking 20 questions about this? 21 A I don't remember if I have it in an email 22 or if it was a conversation. 23 Q I mean, I think what you told me so far 24 is that you haven't seen it, right? 25 A What, that teaching in person is an</p>	<p>1 essential function of the job? 2 Q Right. 3 A That, again, was -- that was information 4 that was developed in consultation with -- 5 Q But my question was you have not seen it, 6 have you? 7 A No, they didn't send me an email and 8 said, "This is what you should say." 9 Q Who sent you that email? 10 A No, I said they have not. 11 Q Oh, okay. Did you ask them for it? 12 A Yes, that's what I'm saying. This was 13 language that was developed and confirmed with system 14 legal counsel. 15 Q Okay. When was it developed? 16 A When he asked the question. 17 Q Okay. So as far as you know, it wasn't 18 developed before then? 19 A It was understood before then, but in 20 order to be able to answer his question in a correct 21 fashion, I confirmed that language with them. 22 Q Okay. But -- all right. So to go back 23 to the FMLA issue then, you knew that this wasn't 24 going to be a satisfactory answer, right? 25 A You mean when I sent the letter to --</p>

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<p>1 Q Right. When you said "full-time, full 2 duty means in the classroom in person," or however you 3 said that, right?</p> <p>4 A Okay, yes.</p> <p>5 Q Okay. So that being the case, because 6 not only Dr. Oross was challenging it, but other 7 people were too, did you go back to him and say, 8 "Look, I need something more, you know, definitive? 9 You know, send it to me so I can send it to them"?</p> <p>10 A No, because, I mean, that's what they 11 gave me. That was what I -- that's what we asked for 12 to clarify that this is -- this is how we should 13 express this and that's what we got.</p> <p>14 Q Okay.</p> <p>15 A So I didn't go back for anything more.</p> <p>16 Q Okay. So just let me understand this 17 because I'm confused. So there is no specific job 18 description for an associate professor that says this, 19 right, that says full duty means full-time in the 20 classroom?</p> <p>21 A There is no generic job description that 22 comes as a result of the bargaining agreement.</p> <p>23 Q Right. And --</p> <p>24 A There is -- there is a job description 25 that we offer as a supplement to the FMLA to the</p>	<p>1 serious health condition form for the employee's 2 physician or a medical provider to review.</p> <p>3 Q For staff, not faculty you mean?</p> <p>4 A For faculty we have a generic job 5 description which talks about in general -- in general 6 terms about duties --</p> <p>7 Q Where is it?</p> <p>8 A -- of the faculty member.</p> <p>9 Q Where is it?</p> <p>10 A Do you mean where is it housed?</p> <p>11 Q Right.</p> <p>12 A Our office has that file.</p> <p>13 Q Okay. Well, is it on your website?</p> <p>14 A It's not on a public website, no.</p> <p>15 Q And has it ever been provided to Dr. 16 Oross?</p> <p>17 A I believe it was provided -- it would 18 have been provided with the FMLA paperwork that was 19 initially sent out for his serious health condition 20 form to be provided to his physician.</p> <p>21 Q Well, it was never provided to him before 22 he requested an accommodation, right?</p> <p>23 A It would have been provided in January 24 when -- in January of 2021 when he requested the FMLA 25 leave initially.</p>
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<p>1 Q And where was that again?</p> <p>2 A It should have been provided with the 3 serious health condition form in the FMLA paperwork 4 that was provided in January of 2021.</p> <p>5 Q All right. So when you're talking about 6 full-time, full duty, are you talking about returning 7 from FMLA? Is that where this -- I'm confused about 8 where the language is coming from and where it goes.</p> <p>9 A Okay, that -- the return to full-time, 10 full duty is -- we're talking about ending the FMLA 11 leave, which is what the letter was generated to 12 discuss.</p> <p>13 Q So it does not mean that you can't have 14 an accommodation that would entail remote work 15 accommodations or a modified work schedule; is that 16 what you're saying?</p> <p>17 A Correct. That letter is exclusive and 18 does not pertain to any ADA accommodations that might 19 be offered in the intervening period.</p> <p>20 Q Well, when you understood that he thought 21 that that's what you were saying, did you do anything 22 and say, "Oh, that's not what we meant. Here, come on 23 in and let's talk about the spring"?</p> <p>24 MS. LE: Objection to form.</p> <p>25 A No, because we weren't aware that he had</p>	<p>1 requested anything for the spring.</p> <p>2 BY MS. McKINLEY:</p> <p>3 Q Well, Jesus Pena was aware of it, right? 4 We just looked at the letter.</p> <p>5 A So I would say, on one hand, I was not 6 aware of that letter; but, on the other hand, my 7 understanding was that he still wanted a 100 percent 8 online schedule and for spring he was scheduled for 9 two online courses and two multi-modal courses, and 10 multi-modal would have required his presence in the 11 classroom at least some portion of the time.</p> <p>12 Q Right. He would be required to be in the 13 classroom but the students could or not, depending on 14 how they --</p> <p>15 A Correct.</p> <p>16 Q They decide whether they want to be 17 there, but he would have to be there himself no matter 18 what?</p> <p>19 A Correct.</p> <p>20 Q And that was not something that was 21 discussed with him in any kind of interactive process, 22 correct?</p> <p>23 A No. It was very clear that that was not 24 something that was -- that he was interested in.</p> <p>25 Q Well, but there was no discussion with</p>

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<p>1 him, was there?</p> <p>2 A No. It was very clear from all of his</p> <p>3 emails and comments in the media that he was still</p> <p>4 looking for a 100 percent online schedule which would</p> <p>5 have involved the conversion of classes to online.</p> <p>6 Q Right, as a reasonable accommodation?</p> <p>7 A Correct.</p> <p>8 Q How many tenured professors have at least</p> <p>9 part-time remote work schedules; in other words, are</p> <p>10 teaching remotely? Not as an accommodation. I didn't</p> <p>11 mean it that way.</p> <p>12 A I don't know. I don't -- I don't have</p> <p>13 any knowledge of which professors have which</p> <p>14 schedules.</p> <p>15 Q Do you have any knowledge of how many</p> <p>16 professors in the psychology department teach at least</p> <p>17 part of their -- part of their teaching load online?</p> <p>18 A I do not.</p> <p>19 Q Do you know how many or what percentage</p> <p>20 of the courses at Kutztown as an overall university</p> <p>21 offered online in the fall semester?</p> <p>22 A In the fall of 2021, no, I don't.</p> <p>23 Q How about the spring?</p> <p>24 A Again, I don't -- I don't know those</p> <p>25 figures off the top of my head.</p>	<p>1 Q Would you take a look at Exhibit 20 --</p> <p>2 I'm sorry, 19.</p> <p>3 A 19?</p> <p>4 Q Yes.</p> <p>5 A Okay.</p> <p>6 (SO Exhibit Number 19 produced and marked</p> <p>7 for identification.)</p> <p>8 BY MS. McKINLEY:</p> <p>9 Q Okay. So this is labeled the "Interim</p> <p>10 Agreement Regarding Distance Education and Instruction</p> <p>11 for Academic Year 2021-22." Have you seen this</p> <p>12 before?</p> <p>13 A Yes.</p> <p>14 Q Okay. And tell me how you saw it.</p> <p>15 A It was provided to the HR directors and</p> <p>16 universities, you know, to be added to our contract.</p> <p>17 Q Okay. So it's dated -- well, on one side</p> <p>18 10/4/21 and on the other side 10/5/21. Did you</p> <p>19 receive it around that time?</p> <p>20 A I don't know exactly when I received it,</p> <p>21 but I would expect around that time or shortly</p> <p>22 thereafter.</p> <p>23 Q Okay. And were you involved at all in</p> <p>24 the negotiations that led to this agreement?</p> <p>25 A I was not.</p>
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<p>1 Q Were you provided with any instructions</p> <p>2 as to how it would be implemented at Kutztown?</p> <p>3 A I was not.</p> <p>4 Q Since you've received it, have you had</p> <p>5 any discussions with Jesus Pena about it?</p> <p>6 A I have not. The scheduling of course</p> <p>7 modality is not a matter that HR has any interaction</p> <p>8 with.</p> <p>9 Q Well, if there is an addenda to the</p> <p>10 contract that basically relaxes what you've been</p> <p>11 talking about as, you know, policy, so to speak, that</p> <p>12 we don't want to convert classes, this would be pretty</p> <p>13 important for purposes of the interactive process,</p> <p>14 wouldn't it?</p> <p>15 MS. LE: Objection to form.</p> <p>16 A This particular document talks about</p> <p>17 lifting the requirement that -- courses to be offered</p> <p>18 in distance education modality need to be approved by</p> <p>19 university curriculum committees. It reiterates just</p> <p>20 that faculty members may not change the modality</p> <p>21 without prior approval from the administration, but</p> <p>22 beyond that that doesn't -- that doesn't speak to</p> <p>23 anything regarding ADA.</p> <p>24 BY MS. McKINLEY:</p> <p>25 Q Well, everything has an impact on the</p>	<p>1 interactive process, doesn't it, in terms of the</p> <p>2 circumstances -- the individualized circumstances of</p> <p>3 the employee, the interests and the context that's</p> <p>4 going on in the workplace? Everything is supposed to</p> <p>5 be considered, isn't it?</p> <p>6 A Yes.</p> <p>7 Q So did you or anyone that you know of in</p> <p>8 HR or in the division of human equity -- Jesus's, you</p> <p>9 know, domain -- ever have a conversation about how, if</p> <p>10 at all, this document might provide some latitude or</p> <p>11 some flexibility that would allow some of these people</p> <p>12 who have been asking for remote work accommodations</p> <p>13 for really serious health impairments during the</p> <p>14 pandemic, how this might be something that you could</p> <p>15 use?</p> <p>16 A As I understand this document, this</p> <p>17 merely speaks to lifting the requirement that a course</p> <p>18 needs to pass university curriculum committee before</p> <p>19 being offered as online. So since Dr. Oross's</p> <p>20 accommodation request was not rejected on the basis</p> <p>21 that those courses had not passed university</p> <p>22 curriculum committee, I don't see that this has any</p> <p>23 impact in any way on our decision.</p> <p>24 Q Well, his department was very supportive</p> <p>25 of his request, wasn't it?</p>

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<p>1 MS. LE: Objection to form.</p> <p>2 A I don't really know that we had -- I did</p> <p>3 not have a discussion. That's my understanding, but I</p> <p>4 didn't have a discussion with them.</p> <p>5 (SO Exhibit Number 21 produced and marked</p> <p>6 for identification.)</p> <p>7 BY MS. McKINLEY:</p> <p>8 Q Would you take a look at Exhibit 21.</p> <p>9 A Okay.</p> <p>10 Q So this is another email string.</p> <p>11 Fortunately, it's shorter than the last couple we've</p> <p>12 looked at. So the first email is at the bottom from</p> <p>13 you to Dr. Oross.</p> <p>14 A Um-hum.</p> <p>15 Q And it talks about planning for the fall</p> <p>16 semester.</p> <p>17 A Um-hum.</p> <p>18 Q And it asks if he intends again to</p> <p>19 request an accommodation. Did you ever send him a</p> <p>20 similar email at any time with regard to the spring</p> <p>21 semester?</p> <p>22 A I did not.</p> <p>23 Q Now, were you aware that what Dr. Oross</p> <p>24 was requesting was a synchronous teaching schedule,</p> <p>25 not a multi-modal thing or asynchronous? Did you know</p>	<p>1 that that's what he was asking for?</p> <p>2 A I'm sorry, I missed what you said. Did I</p> <p>3 know that Dr. Oross --</p> <p>4 Q That's okay. Were you aware that his</p> <p>5 accommodation request was for synchronous instruction?</p> <p>6 A Synchronous online. I don't remember if</p> <p>7 I specifically knew that but -- again, I don't think</p> <p>8 that would have influenced our decision.</p> <p>9 Q Okay. Well, the reason I'm asking is</p> <p>10 because that's not what he has. So can you tell me</p> <p>11 how -- I mean, he's obviously back to work and there's</p> <p>12 a lawsuit and we all know there was a TRO at one</p> <p>13 point. So tell me how that worked out in terms of how</p> <p>14 we got from where we were in October to where we are</p> <p>15 now so that --</p> <p>16 MS. LE: Objection.</p> <p>17 BY MS. McKINLEY:</p> <p>18 Q -- you were in a situation to send him an</p> <p>19 email like this?</p> <p>20 MS. LE: Objection to form.</p> <p>21 MS. McKINLEY: I know. It's a terrible</p> <p>22 question. Let me try it again. I'm getting tired.</p> <p>23 MS. LE: It's a long day.</p> <p>24 MS. McKINLEY: It has been a long day.</p> <p>25 BY MS. McKINLEY:</p>
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<p>1 Q So you say do you intend -- you're asking</p> <p>2 him if he intends to again request an accommodation</p> <p>3 and then you said that if you want the same thing you</p> <p>4 already have, you don't have to do anything.</p> <p>5 So my question is: Were you aware that</p> <p>6 what he has in the way of his accommodations right now</p> <p>7 is not what he asked for to begin with?</p> <p>8 MS. LE: Objection to form.</p> <p>9 A Okay. Yes, I understand. So I said "If</p> <p>10 there is no change to the accommodations requested,</p> <p>11 there is no need to submit a new request form; only</p> <p>12 the updated medical information is needed. And if you</p> <p>13 wish to change the accommodation, submit a new form."</p> <p>14 BY MS. McKINLEY:</p> <p>15 Q All right. So that's why I'm confused</p> <p>16 because I think there's a distinction between the</p> <p>17 accommodation he requested and the accommodation that</p> <p>18 he has, and I don't know if you were aware of that</p> <p>19 when you wrote this email or if I'm being</p> <p>20 hyper-technical, but he asked for synchronous and he's</p> <p>21 not asynchronous. So how does that fit into this</p> <p>22 email, I guess is what I'm asking you? Do you</p> <p>23 understand my question?</p> <p>24 MS. LE: Objection.</p> <p>25 A Yes. Yes, I do understand. I was not</p>	<p>1 aware of what the online schedule he was granted for</p> <p>2 the spring, if it was synchronous or asynchronous. I</p> <p>3 just knew that it was online.</p> <p>4 So that was -- but that was the intention</p> <p>5 of the email, was to establish forward planning, what</p> <p>6 was desired for fall, if it was the same as what was</p> <p>7 previously requested or if there was some alteration</p> <p>8 to that.</p> <p>9 BY MS. McKINLEY:</p> <p>10 Q Okay. So if he wanted a synchronous</p> <p>11 teaching schedule for the fall when he has an</p> <p>12 asynchronous teaching schedule now, where does that</p> <p>13 leave him in relation to this email? In other words,</p> <p>14 does he have to submit more information or not?</p> <p>15 A So to be honest, I didn't take into</p> <p>16 account the synchronous versus asynchronous aspect of</p> <p>17 that because I -- I don't even know if that -- I would</p> <p>18 have to go back and look at the original request to</p> <p>19 see if that was spelled out in the original request.</p> <p>20 Q Well, we can look at it if you want, but</p> <p>21 -- it is Exhibit 2.</p> <p>22 A Exhibit 2. Do I have that?</p> <p>23 MS. LE: I don't know. Let me send it to</p> <p>24 you in case you don't have it. I don't think we've</p> <p>25 looked at it today.</p>

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1 A Yeah.

2 BY MS. McKINLEY:

3 Q All right. Actually, I don't see it on
4 here, but I know we had some other -- it doesn't
5 matter. If you don't know, it's fine.

6 So when you -- with regard to your email,
7 you are referring to remote accommodation, not a
8 specific type of remote accommodation; is that right?

9 A Yes, so I didn't -- I didn't address that
10 synchronous versus asynchronous aspect. Like I said,
11 I did not take that into account necessarily.

12 Q Okay. I guess my fundamental question is
13 given the conversation we've had today and everything
14 that, you know, has happened, are you expecting him to
15 submit anything further if he needs an accommodation
16 for the fall that entails a remote teaching schedule
17 full-time?

18 A I think that's a valid question that you
19 raised, whether it's synchronous or asynchronous, and
20 I would think that that would be something that we
21 would need to know so that we could take that into
22 account and plan accordingly or factor that in there.

23 Q I guess maybe one of the things I'm also
24 wondering about is with regard to your role in HR, as
25 opposed to the role, you know, of the dean and the

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1 chair, I mean, do you need to get involved in -- you
2 know, in the specific type of remote accommodation or
3 is your job just kind of limited to, yes, he can have
4 the remote accommodation and you guys go figure it out
5 based on what you need and you agree on?

6 A Unless it's specified in the
7 accommodation request as one thing or the other, we --
8 HR typically would not be driving that conversation.
9 That part of it would be developed between the dean
10 and the chair and the employee.

11 Q Okay. So let's assume that -- we don't
12 know what's going to happen with the pandemic between
13 now and the fall. Assume for now we're planning on,
14 you know, at least possibly needing that remote
15 accommodation in the fall. Does he need to send you
16 anything new in response to your email?

17 A Well, we still need the -- we still need
18 the updated medical just because of --

19 Q Okay. All right.

20 A I don't think --

21 Q Well, since you're here, I wanted to ask
22 you because I was confused about it.

23 A Okay. I'm sorry. I was going to say I
24 don't think it would be a bad idea just to clarify the
25 synchronous versus asynchronous aspect.

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1 Q I think that's a -- yeah, that's fair.

2 I think I went through my exhibits, but I
3 did want to go back and ask you a couple random things
4 to sort of tie things up. So when we talked about --
5 you said there were three people who asked for remote
6 teaching accommodations for this current school year.
7 What are their names?

8 MS. LE: Without revealing -- don't
9 reveal any possible medical information you have.

10 MS. McKINLEY: No, I don't want that.

11 BY MS. McKINLEY:

12 Q I just -- for purposes of discovery,
13 we're going to need names so -- I know one of them is
14 Carolyn Gardner. I can save you time for that. Who
15 are the other -- who is the other one? Is there one
16 or two more?

17 A So at the time that that -- he had
18 submitted the request, there were two others. That
19 was Judith Rauenzahn --

20 Q I'm sorry, repeat that. I didn't hear
21 that.

22 A Let me spell it for you. Judith
23 Rauenzahn. R-a-u-e-n-z-a-h-n.

24 Q Thank you for that. Okay. And do you
25 know what department she's in?

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1 A Psychology.

2 Q Psychology. Okay. And who are the
3 others?

4 A Kristin Bazley, B-a-z-l-e-y.

5 And then there were some that were
6 received subsequent to that. Carolyn Gardner, of
7 course, was one in business administration. I'm
8 trying to think who else. Christine Rhoads,
9 R-h-o-a-d-s, I think was one.

10 Q Okay. All right. Anyone else?

11 A I'm trying to think of who else may have
12 been included in there. I feel like there was one
13 other, except I can't -- I'm not hitting on the name
14 right now.

15 Q Okay. Well, we made a request so
16 presumably we'll get that information, but I just
17 wanted to know the names so that I can make sure to
18 know what to check for when I get that information.

19 So with regard to Dr. Oross, before we
20 move any farther, is there anything in the way of HR
21 documentation that indicates right now, yes, he has an
22 accommodation -- a remote work accommodation for
23 classes this semester?

24 A Beyond which we've noted in the HR
25 system, in the leave of absence documentation that,

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<p>1 you know -- we have a -- it's like a diary with the</p> <p>2 different dates that things happen in there. And we</p> <p>3 do have it notated that, you know, this timeline</p> <p>4 progression is suspended because of the restraining</p> <p>5 order.</p> <p>6 Q Okay. So that's what I was really asking</p> <p>7 you. Is that how it's listed or is it listed that</p> <p>8 he's receiving a reasonable accommodation? Do you</p> <p>9 understand -- I mean, I'm trying to make a distinction</p> <p>10 between the legal piece and the way it's documented in</p> <p>11 HR, if there is a distinction.</p> <p>12 A Understood. It is documented as being in</p> <p>13 place because of the restraining order, not because of</p> <p>14 the reasonable accommodation.</p> <p>15 Q Okay. So has there been any change in</p> <p>16 terms of the policy of not providing remote</p> <p>17 accommodations for people as a result of</p> <p>18 immune-suppression and so forth that we've been</p> <p>19 discussing with regard to teaching schedules?</p> <p>20 MS. LE: Objection to form.</p> <p>21 A It was not a denial because of their</p> <p>22 status but rather the conversion from in person to</p> <p>23 online.</p> <p>24 BY MS. McKINLEY:</p> <p>25 Q Well, I know, we've been through that.</p>	<p>1 It's because of their medical condition that we're in</p> <p>2 this -- we're having this conversation, right?</p> <p>3 A It has to do with that conversion. So,</p> <p>4 you know, we have begun that interactive process of</p> <p>5 looking forward to be able to schedule proactively.</p> <p>6 Q Okay. I understand that, but we're</p> <p>7 talking about a specific subset of people with</p> <p>8 disabilities. I mean, we're not talking about people</p> <p>9 who need a wheelchair ramp or something like that,</p> <p>10 right?</p> <p>11 A Understood.</p> <p>12 Q It's a specific kind of disability that</p> <p>13 requires a certain kind of accommodation that -- we're</p> <p>14 talking about that subset of people, aren't we?</p> <p>15 A Yes.</p> <p>16 Q Okay. So my question was with regard to</p> <p>17 those people has there been any change in the -- and I</p> <p>18 know that the word policy is a loaded word, but I</p> <p>19 can't think of a better one but -- the practice, or</p> <p>20 whatever you want to call it, with regard to how these</p> <p>21 things have been handled so far this year, has there</p> <p>22 been any change from the administration?</p> <p>23 A So there hasn't been a change in our</p> <p>24 interpretation that converting classes from in person</p> <p>25 to online is not a reasonable accommodation, but we</p>
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<p>1 have begun the process of reaching out proactively to</p> <p>2 look forward to the fall to try and schedule</p> <p>3 accordingly to avoid that issue.</p> <p>4 MS. McKINLEY: I just want to take a look</p> <p>5 at the complaint one more time. We can take a</p> <p>6 five-minute break while I do that.</p> <p>7 MS. LE: Sure.</p> <p>8 (Break taken.)</p> <p>9 BY MS. McKINLEY:</p> <p>10 Q I think we're just about done. I just</p> <p>11 have a couple of questions.</p> <p>12 So we were talking about the way Dr.</p> <p>13 Oross's accommodations are being carried right now in</p> <p>14 the HR department.</p> <p>15 A Yes.</p> <p>16 Q So is it your understanding that that is</p> <p>17 going to remain the case until we resolve the lawsuit</p> <p>18 one way or the other?</p> <p>19 MS. LE: Objection to form.</p> <p>20 A It's my understanding --</p> <p>21 BY MS. McKINLEY:</p> <p>22 Q And I don't know -- I'm just asking what</p> <p>23 you think or what you can tell me right now.</p> <p>24 A It's my understanding that they will</p> <p>25 remain that way through the end of the spring semester</p>	<p>1 and I would want to confirm that it should continue</p> <p>2 that way for the fall semester.</p> <p>3 Q Okay. So have you heard back yet from</p> <p>4 his department?</p> <p>5 A About?</p> <p>6 Q The spring -- his spring schedule.</p> <p>7 A About his --</p> <p>8 Q Don't worry about it. Let me just ask</p> <p>9 you one more question.</p> <p>10 So if, let's say, voilà, the pandemic</p> <p>11 goes away and he wants to come back to work in person,</p> <p>12 let's say that, you know, the doctors says, "Yeah, I</p> <p>13 mean, now you're good to go," I mean, would he be able</p> <p>14 to do that in the fall, even if he requests an</p> <p>15 accommodation now on the -- you know, because we don't</p> <p>16 know?</p> <p>17 A So is the question that -- are you asking</p> <p>18 if his schedule -- if his courses were scheduled</p> <p>19 online and he wanted to come back in person?</p> <p>20 Q Right.</p> <p>21 A I don't know. I -- if students were</p> <p>22 already registering for them and so forth, I'm not</p> <p>23 sure how that would be addressed.</p> <p>24 Q The final thing I wanted to ask you about</p> <p>25 is with regard to the other people that you mentioned</p>

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<p>1 by name a few minutes ago.</p> <p>2 A Um-hum.</p> <p>3 Q Were some of those people allowed to</p> <p>4 teach some of their classes online and then -- in</p> <p>5 other words, like, I know that four classes are a</p> <p>6 full-time schedule. So were all of them denied the</p> <p>7 opportunity to teach at all or were some of them</p> <p>8 allowed to teach their online classes?</p> <p>9 A So there were two of those that I</p> <p>10 mentioned who had some portion of their schedule</p> <p>11 already scheduled online and were permitted to teach</p> <p>12 that portion of it -- to continue teaching that</p> <p>13 portion of it online and use leave for the remainder</p> <p>14 to make up the difference.</p> <p>15 Q Okay.</p> <p>16 MS. McKINLEY: I don't have any other</p> <p>17 questions. It's been a long day. Thank you for your</p> <p>18 time.</p> <p>19 A You're welcome.</p> <p>20 MS. LE: I just have a couple of</p> <p>21 follow-up questions.</p> <p>22</p> <p>23 EXAMINATION</p> <p>24</p> <p>25 BY MS. LE:</p>	<p>1 Q Ms. Weidman, did you have any involvement</p> <p>2 or input in the scheduling of Dr. Oross's classes for</p> <p>3 the spring 2022 semester before the court order was</p> <p>4 put in place?</p> <p>5 A Did I have any input? No, I had no -- I</p> <p>6 have no influence over faculty scheduling.</p> <p>7 Q And did you have any input or involvement</p> <p>8 in the rescheduling or change in those classes for the</p> <p>9 spring 2022 semester for Dr. Oross after the court</p> <p>10 order was issued?</p> <p>11 A No, beyond -- beyond communicating that</p> <p>12 to the department that that was what was supposed to</p> <p>13 happen, that they were supposed to be offered online.</p> <p>14 Q Okay. And what is your understanding of</p> <p>15 who is in charge of creating the class schedules for</p> <p>16 faculty members?</p> <p>17 A That's done through academic affairs</p> <p>18 between the deans and the chairs with approval from</p> <p>19 the provost.</p> <p>20 Q You testified earlier about an option</p> <p>21 that you offered to Dr. Oross in -- I believe it was</p> <p>22 late August. I think the email was August 26 or 27.</p> <p>23 It was for the creation of two high -- I think it was</p> <p>24 high demand classes that he would be -- that would be</p> <p>25 created for him to teach for the fall semester.</p>
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<p>1 Where did you -- let me ask. Did you</p> <p>2 come up with those options yourself?</p> <p>3 A No.</p> <p>4 Q Where did you get that option to offer to</p> <p>5 Dr. Oross?</p> <p>6 A That was developed -- that idea was</p> <p>7 developed by the president and the provost.</p> <p>8 Q Okay. Was it your understanding when you</p> <p>9 offered those classes to -- let me back up.</p> <p>10 Was it your understanding when you made</p> <p>11 that offer to Dr. Oross that the creation of the two</p> <p>12 classes was not contingent on later information but</p> <p>13 only the details of what those two classes would be</p> <p>14 were dependent on information to be gleaned later?</p> <p>15 MS. McKINLEY: I object to the form of</p> <p>16 the question.</p> <p>17 A Correct. It was my understanding that</p> <p>18 the fact that two courses were being offered was --</p> <p>19 was fact and that it was just the question of what the</p> <p>20 subject matter would be that was to be determined</p> <p>21 after drop-and-add.</p> <p>22 MS. LE: I don't have any further</p> <p>23 questions. Thank you.</p> <p>24 MS. McKINLEY: I have nothing. We're</p> <p>25 done.</p>	<p>1 THE COURT REPORTER: Ms. Le, would you</p> <p>2 like a copy of the transcript?</p> <p>3 MS. LE: Yes, I would, please.</p> <p>4 THE COURT REPORTER: Is PDF good?</p> <p>5 MS. LE: Yes, we prefer electronic.</p> <p>6 THE COURT REPORTER: Thank you.</p> <p>7 MS. McKINLEY: And we do too.</p> <p>8 THE COURT REPORTER: And you too, Ms.</p> <p>9 McKinley?</p> <p>10 MS. McKINLEY: Yes.</p> <p>11 THE COURT REPORTER: Thank you.</p> <p>12 (The virtual deposition was concluded at 2:44 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Jennifer Weidman

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1 COMMONWEALTH OF PENNSYLVANIA : §.
2 COUNTY OF CUMBERLAND :
3 I, Teresa K. Bear, a Court Reporter and
4 Notary Public in and for the Commonwealth of
5 Pennsylvania and County of Cumberland, do hereby
6 certify that the foregoing virtual deposition was taken
7 before me at the time and place hereinbefore set forth,
8 and that it is the testimony of:

9 JENNIFER WEIDMAN

10 I further certify that said witness was
11 by me duly sworn to testify the whole and complete
12 truth in said cause; that the testimony then given was
13 reported by me stenographically, and subsequently
14 transcribed under my direction and supervision; and
15 that the foregoing is a full, true and correct
16 transcript to the best of my ability of my original
17 shorthand notes.

18 I further certify that I am not counsel for
19 or related to any of the parties to the foregoing
20 cause, or employed by them or their attorneys, and am
21 not interested in the subject matter or outcome
22 thereof.

23 In testimony whereof, I have hereunto
24 subscribed my hand this 15th day of March 2022.

25 Teresa K. Bear, Notary Public
Court Reporter

(The foregoing certification of this
transcript does not apply to any reproduction of the
same by any means unless under the direct control
and/or supervision of the certifying reporter.)

My commission expires:
April 25, 2023

Jennifer Weidman

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